

NOTICE
This order was filed under Supreme Court Rule 23 and may not be cited as precedent by any party except in the limited circumstances allowed under Rule 23(e)(1).

2012 IL App (4th) 110269-U
NO. 4-11-0269
IN THE APPELLATE COURT
OF ILLINOIS
FOURTH DISTRICT

FILED
November 27, 2012
Carla Bender
4th District Appellate
Court, IL

THE PEOPLE OF THE STATE OF ILLINOIS,)	Appeal from
Plaintiff-Appellee,)	Circuit Court of
v.)	Sangamon County
BRADLEY L. ADAMS,)	No. 95CF482
Defendant-Appellant.)	
)	Honorable
)	Esteban F. Sanchez,
)	Judge Presiding.

JUSTICE KNECHT delivered the judgment of the court.
Presiding Justice Turner and Justice Steigmann concurred in the judgment.

ORDER

- ¶ 1 *Held:* The trial court did not err in dismissing defendant's petition for postconviction relief from judgment at the second stage where defense counsel's actions were not unreasonable and defendant was not prejudiced by them.
- ¶ 2 Defendant, Bradley Adams, was convicted of first degree murder and concealment of a homicide following a jury trial. He was sentenced to 65 years for the murder and 5 years for the concealment of a homicide. On direct appeal, his convictions and sentences were affirmed.
- ¶ 3 Defendant filed a *pro se* postconviction petition and counsel was appointed. The State moved to dismiss the petition and the trial court dismissed it after a hearing. Defendant appeals, arguing the trial court erred in engaging in improper fact-finding at the second stage of postconviction proceedings and defendant's postconviction petition made a substantial showing of a claim of ineffective assistance of counsel. Defendant requests this court reverse the trial

court's finding and remand the case for a third-stage evidentiary hearing. We affirm the trial court's dismissal of defendant's postconviction petition.

¶ 4

I. BACKGROUND

¶ 5 In August 1995, defendant was charged with four counts of first degree murder, aggravated battery and concealment of a homicide in connection with the death of his girlfriend, Molly Sullivan, in February 1995. The charging instruments alleged defendant strangled Sullivan, causing her death.

¶ 6 In March 1996, the trial court held a pretrial hearing on a motion by the State to admit evidence of defendant's prior misconduct. At the hearing, the State called Eva Golterman to testify about an incident between her and defendant in October 1993. At that time, Golterman and defendant were engaged to be married and lived in separate units of the same apartment complex. Golterman stated she and defendant were leaving the complex and she stopped to check her mail. She found a letter addressed to her from Francis Krupka. Golterman opened the letter in defendant's presence and began reading it. The letter indicated Krupka and defendant were involved in a homosexual relationship. Defendant grabbed the letter and ran to his apartment. Golterman followed and confronted defendant about his relationship with Krupka. Golterman attempted to grab the letter back from defendant, but he pinned her arm behind her back. When Golterman asked again about the alleged relationship, defendant grabbed her throat for more than a minute, kicked her in the abdomen, and pushed her to the floor. The court granted the State's motion, finding this evidence admissible.

¶ 7 Defendant's trial was held in April 1996. On February 25, 1995, Sullivan attended a party at defendant's apartment. Also present was Krupka. At one point in the evening, Sullivan

and Krupka had a conversation in the bedroom. Afterward, Sullivan was upset. Sullivan told her best friend, Mary White, about the conversation with Krupka and specifically mentioned Krupka stated he was in love with defendant. Later, defendant became angry with Krupka and pushed him against a wall. Sullivan intervened.

¶ 8 In the early morning hours of February 26, 1995, a neighbor heard two men yelling in a parking lot next door. One yelled "Why did you do it? I'm going to kill you." Later that morning, police officers discovered the body of woman later identified as Sullivan in that same parking lot.

¶ 9 Friends and family of Sullivan asked defendant about Sullivan's whereabouts before her body was found. He told some of them he did not know where Sullivan was and to check with her best friend. He later stated a woman's body had been found in a parking lot but it did not fit the description of Sullivan. He told Sullivan's sisters "f-ing niggers" killed her. The sisters saw some of Sullivan's possessions at defendant's apartment, including a necklace, rings, shoes, and purse.

¶ 10 Detectives who questioned defendant stated he was intoxicated and became irate and verbally abusive during their questioning. He yelled at them and told them to look for the "f-ing nigger" who killed Sullivan and denied knowing her location. When the police executed a search warrant at defendant's apartment, he was sleeping and when he awoke, he was told the woman found in the parking lot was Sullivan. Defendant immediately asked if he was under arrest. The police asked him why he would be under arrest and he became belligerent and verbally abusive. After a final interview with defendant at his father's home on February 28, 1995, he told detectives he did not know what happened to Sullivan.

¶ 11 Two pathologists testified on the cause of Sullivan's death. One could not determine the exact cause of death but stated she had died of asphyxiation. Sullivan also had a broken arm and the fracture occurred before her death and was characteristic of a fall. Sullivan had a form of muscular dystrophy afflicting the upper portion of her body. The condition would have caused extreme weakness in her chest and the muscles around her ribs and diaphragm would have been deteriorating, inhibiting her ability to breath. There were abrasions to Sullivan's neck which could have been caused by her necklace found at defendant's apartment. The doctor did not find physical indicia of strangulation.

¶ 12 The other pathologist testified Sullivan was strangled. In his opinion, the marks on her necks were consistent with her necklace and were caused by the necklace being pressed against the neck when she was strangled.

¶ 13 Golterman testified as she had at the pretrial hearing. In addition, she stated she was not mad at defendant but sad because she had been pregnant with defendant's child and the relationship with Krupka interfered with her then engagement to defendant. Defense counsel attempted to impeach Golterman with a statement she made to him during an unsolicited telephone call, in which she told counsel she had better not be dragged into this case or she would do whatever she could to hurt defendant. The State objected to defense counsel's question on the basis counsel could not prove the conversation occurred and the State could not challenge it since there was no other witness to the conversation. The State suggested counsel recuse himself from the case so he could testify as to Golterman's statement. Defense counsel claimed he did not need to recuse himself and stated he would be bound by Golterman's reply either way. The trial court ruled the only way the telephone conversation evidence could be admitted was if

defense counsel recused himself in order to testify.

¶ 14 Defense counsel also tried to impeach Golterman by asking if she stated in her pretrial testimony she was "mad" at defendant and not "sad." The State objected again unless counsel had a transcript of the pretrial hearing testimony in order to impeach Golterman. Counsel dropped his attempt at impeachment.

¶ 15 Defendant testified on his own behalf. Initially, he denied the event with Golterman. Then, he claimed he and Sullivan discussed the comments made by Krupka and at some point Sullivan began to walk away from him. Defendant attempted to grab her shoulder but inadvertently grabbed the back of her necklace, causing it to break and fall to the floor. He attempted to fix the necklace while Sullivan was behind him. He turned to hug her and they stumbled to the floor where he fell on her chest. Defendant continued to sit on Sullivan's chest while discussing the Krupka situation. After a few minutes, he noticed Sullivan was not responding. After arguing with Krupka over whether to take Sullivan to the hospital or call the police, they decided to drive her to the hospital. Defendant carried Sullivan's body to the parking lot and placed it in his car. He claimed he saw Krupka drive the car out of the parking lot. Once Krupka left, defendant went back to his apartment and passed out on the couch.

¶ 16 Defendant acknowledged lying to the police and Sullivan's family and friends because he panicked and was afraid no one would believe him. He accepted responsibility for Sullivan's death but claimed he did not intend to kill her and maintained it was an accident.

¶ 17 Krupka was called as a witness by defendant but asserted his fifth amendment rights and declined to answer. The jury returned a guilty verdict on all six counts. In June 1996, the trial court vacated defendant's conviction for aggravated battery and sentenced him to 65

years' imprisonment for first degree murder and a consecutive 5-year term for concealment of a homicide.

¶ 18 Defendant appealed his conviction and sentence. On December 10, 1999, this court affirmed defendant's conviction and sentence for murder on count I and vacated the murder convictions on counts II, III, and IV. *People v. Adams*, 308 Ill. App. 3d 995, 721 N.E.2d 1182 (1999).

¶ 19 On April 22, 1999, defendant filed a *pro se* postconviction petition. On April 26, 1999, counsel was appointed to represent defendant in postconviction proceedings. On May 26, 1999, the State filed a motion to dismiss the postconviction petition.

¶ 20 On February 21, 2001, the trial court conducted a hearing on the State's motion to dismiss. This motion was denied as to defendant's allegations of ineffective assistance of counsel and granted as to defendant's other allegations.

¶ 21 On April 17, 2001, appointed counsel filed an amended petition for postconviction relief. The amended petition contended trial counsel was ineffective for failing to properly impeach Golterman and appellate counsel was ineffective for failing to raise the issue.

¶ 22 On June 11, 2001, the State filed a motion to dismiss defendant's amended petition for postconviction relief. On June 4, 2004, the trial court granted the State's motion.

¶ 23 Defendant appealed. In *People v. Adams*, No. 4-04-0565 (Sept. 11, 2006) (unpublished order under Supreme Court Rule 23), this court reversed and remanded because the record did not establish postconviction counsel had complied with Illinois Supreme Court Rule 651(c) (eff. Dec. 1, 1984).

¶ 24 On January 19, 2010, postconviction counsel filed a petition for postconviction

relief. The petition raised 15 different issues, including 2 issues relating to ineffective assistance of trial and appellate counsel. On June 10, 2010, the State filed a memorandum in support of a motion to dismiss defendant's petition for postconviction relief. On June 29, 2010, the trial court conducted a hearing on the State's motion to dismiss. The court took the matter under advisement.

¶ 25 On March 8, 2011, the trial court issued a written order granting the State's motion to dismiss. It dismissed all of the issues except the two relating to ineffective assistance of counsel on the basis of forfeiture because they could have been raised on direct appeal. For the ineffective assistance issues, the court found neither the performance prong nor the prejudice prong of the *Strickland* test was established for those issues. This appeal followed.

¶ 26 II. ANALYSIS

¶ 27 On appeal, defendant argues his trial counsel was ineffective for failing to impeach Golterman with available evidence significantly discrediting her damaging testimony regarding defendant's intent. He also argues appellate counsel was ineffective for failing to raise trial counsel's ineffectiveness on direct appeal. He contends the trial court erred in dismissing his postconviction petition at the second stage of postconviction proceedings because the court made findings of fact, which is forbidden at the second stage, and his petition made a substantial showing of a constitutional violation. Defendant asks this court to reverse the dismissal order and remand the cause for an evidentiary hearing.

¶ 28 The Post-Conviction Hearing Act (725 ILCS 5/122-1 to 122-7 (West 2010)) establishes a three-stage process for adjudicating a postconviction petition. At the first stage, the trial court must independently review the postconviction petition and dismiss the petition if it

determines the petition is frivolous or patently without merit. *People v. Edwards*, 197 Ill. 2d 239, 244, 757 N.E.2d 442, 445 (2001). If the petition is not summarily dismissed, it advances to the second stage, where counsel may be appointed if defendant is indigent. *People v. Pendleton*, 223 Ill. 2d 458, 472, 861 N.E.2d 999, 1007-08 (2006); 725 ILCS 5/122-2.1(b), 122-4 (West 2010). After counsel has made any necessary amendments to the petition, the State may move to dismiss the petition. *Pendleton*, 233 Ill. 2d at 472, 861 N.E.2d at 1008; 725 ILCS 5/122-5 (West 2010). At the second stage, the court must determine whether the petition and any accompanying documentation make a substantial showing of a constitutional violation. *Edwards*, 197 Ill. 2d at 246, 757 N.E.2d at 446. If no such showing is made, the petition is dismissed. *Id.* If a substantial showing of a constitutional violation is set forth, the petition advances to the third stage and an evidentiary hearing is held. *Id.* Defendant's petition was dismissed at the second stage of postconviction proceedings.

¶ 29 In the context of allegations of ineffective assistance of counsel, an evidentiary hearing is only required if the allegations of the petition, supported by the trial record and accompanying affidavits, make a substantial showing of a violation of defendant's constitutional right to effective assistance of counsel. *People v. Hopley*, 182 Ill. 2d 404, 450-51, 696 N.E.2d 313, 336 (1998). Review of dismissal of a postconviction petition at the second stage is *de novo*. *People v. Coleman*, 183 Ill. 2d 366, 388-89, 701 N.E.2d 1063, 1075 (1998).

¶ 30 To prevail on a claim of ineffective assistance of counsel, a defendant must demonstrate both his defense counsel's performance was deficient and, but for defense counsel's deficient performance, the result of the proceeding would have been different. *Strickland v. Washington*, 466 U.S. 668, 687, 694 (1984). Determinations of ineffective assistance of counsel

involve "mixed question[s] of law and fact." *Id.* at 698.

¶ 31 Motions to dismiss postconviction petitions without an evidentiary hearing are decided upon the trial record and defendant's postconviction allegations. See *People v. Moore*, 189 Ill. 2d 521, 533, 727 N.E.2d 348, 354 (2000). A trial court may review the trial record in determining whether a claim of ineffective assistance of counsel should be dismissed at the second stage of postconviction proceedings without fact-finding. In this case, there is no indication the trial court considered matters outside the trial record in making its determination defense counsel was not ineffective. The court discussed the fact the record indicated no ineffectiveness on the part of defense counsel and no prejudice to defendant from counsel's actions.

¶ 32 Generally, examination or impeachment of a witness is considered to be trial strategy which does not support a claim of ineffective assistance of counsel. *People v. Smith*, 177 Ill. 2d 53, 92, 685 N.E.2d 880, 897 (1997). In our review of the record here, we find, as did the trial court, defendant's trial counsel was neither deficient nor was defendant prejudiced by his actions. Counsel's stated reason for attempting impeachment of Golterman was to show her bias and antagonism against defendant. A review of her trial testimony indicates she was obviously hostile and antagonistic toward defendant. Her responses to defense counsel's questions were often argumentative and non-responsive. Golterman had to be admonished by the court to answer defense counsel's questions on more than one occasion. To impeach Golterman's testimony by using her telephone conversation with counsel, he would have had to withdraw as defendant's counsel and testify as a witness, thus depriving defendant of his expertise as trial counsel. To impeach her with her testimony at the pretrial hearing where she used the word

"mad" instead of "sad" in describing her feeling toward defendant, counsel would have had to have had a transcript of the pretrial hearing readily available, which he did not have at the time of trial. Counsel chose not to proceed with his impeachment attempts.

¶ 33 Impeaching her testimony on the alleged telephone conversation or showing a difference in her testimony at the pretrial hearing would have added little to the obvious impression Golterman's testimony already gave of her dislike for defendant and his side of the case. The decision of defendant's trial counsel to not perfect impeachment of Golterman was not unreasonable. It was a matter of trial strategy.

¶ 34 In reviewing all of the evidence in the case, the case against defendant was strong and the jury already had before it Golterman's testimony and apparent demeanor, which showed her bias against defendant. This court already determined in defendant's direct appeal, with little or no reference to Golterman's testimony, the evidence was sufficient to convict defendant. *Adams*, 308 Ill. App. 3d at 1007-08, 721 N.E.2d at 1190-91. The failure of defense counsel to impeach Golterman's testimony did not prejudice defendant and the result of the case would not have been different had Golterman's testimony been impeached.

¶ 35 As for defendant's claim appellate counsel was ineffective for failing to raise trial counsel's ineffectiveness on direct appeal, appellate counsel is not obligated to bring every conceivable issue on appeal, and counsel is not incompetent for failing to raise issues without merit. *People v. Little*, 335 Ill. App. 3d 1046, 1054, 782 N.E.2d 957, 965 (2003). Trial counsel was not ineffective; therefore, defendant cannot establish appellate counsel was ineffective for failing to raise the issue on direct appeal.

¶ 36 III. CONCLUSION

¶ 37 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.

¶ 38 Affirmed.