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IN THE
APPELLATE COURT OF ILLINOIS
SECOND DISTRICT

THE PEOPLE OF THE STATE)	Appeal from the Circuit Court
OF ILLINOIS,)	of Kane County.
)	
Plaintiff-Appellee,)	
)	
v.)	No. 09-CF-787
)	
CORNELL VINEGAR,)	Honorable
)	Marmarie J. Kostelny,
Defendant-Appellant.)	Judge, Presiding.

JUSTICE HUTCHINSON delivered the judgment of the court.
Presiding Justice Schostok and Justice Jorgensen concurred in the judgment.

ORDER

¶ 1 *Held:* The trial court properly dismissed defendant's postconviction petition, which alleged that counsel was ineffective for failing to present mental-health evidence with defendant's motion to reconsider his sentence: counsel was not deficient, as the court had noted a lack of medical evidence, not mental-health evidence; and any deficiency was not prejudicial, as the court had considered defendant's mental-health issues and the evidence that counsel allegedly should have presented either was duplicative of other evidence or could not have been considered with the motion to reconsider.

¶ 2 Defendant, Cornell Vinegar, appeals the second-stage dismissal of his postconviction petition for relief from his conviction of burglary (720 ILCS 5/19-1(a) (West 2008)) and his 15-year prison sentence. Defendant argues that he is entitled to an evidentiary hearing, because he

made a substantial showing that his counsel was ineffective for failing to present mental health evidence at the hearing on his motion for reconsideration of his sentence “where the trial court had specifically commented on the dearth of such evidence at the sentencing hearing.” For the reasons that follow, we affirm the second-stage dismissal of defendant’s petition.

¶ 3

I. BACKGROUND

¶ 4 Defendant was indicted on one count of burglary (720 ILCS 5/19-1(a) (West 2008)). At defense counsel’s request, the trial court referred defendant to the Kane County Diagnostic Center (KCDC) for a fitness evaluation. Defendant was evaluated and a report was filed. In the report, doctors noted that defendant disclosed having been diagnosed with schizophrenia while incarcerated at the Dixon correctional facility between 1997 and 2001, that he had been hospitalized twice due to suicide attempts, and that he had been prescribed Haldol and Cogentin. In addition, defendant advised the doctors that he had a significant history of substance abuse and had used cocaine and heroin on the night of his arrest. Following an evaluation, the doctors diagnosed defendant with schizophrenia and opined that, although defendant had a history of mental illness, he was fit to stand trial. The parties stipulated to the report, and the trial court found defendant fit to stand trial.

¶ 5 On February 25, 2010, defendant entered an open guilty plea to burglary. After admonishing defendant, the trial court heard the factual basis for the plea, which established the following. During the early morning of March 14, 2009, defendant backed his vehicle through the doors of the Visiting Nurses Association in Aurora, removed an automated teller machine from its location in the lobby, dragged it to his vehicle, and attempted to load it into the rear of his vehicle. When security arrived, defendant drove away at a high rate of speed and was later apprehended by the police. The trial court accepted the plea and set the matter for sentencing.

¶ 6 A sentencing hearing took place on April 22, 2010. At the outset, the trial court noted that it had reviewed the KCDC report as well as the presentencing investigation report (PSI). The PSI, in addition to including defendant's reported mental health history, noted that defendant reported being diagnosed with prostate cancer in 2009. The State submitted documentation related to restitution, and it was admitted into evidence. The State reminded the court of the factual basis for the plea. The State also noted that, although defendant was being sentenced on a Class 2 felony, due to his prior criminal history he was subject to a Class X sentencing range of 6 to 30 years in prison, followed by 3 years of mandatory supervised release.

¶ 7 The State maintained that the maximum sentence of 30 years should be imposed. The State argued in aggravation that defendant's conduct caused or threatened serious harm; the sentence was necessary to deter others; and defendant had "an incredibly-extensive criminal history, with an incredible record of delinquency." With regard to defendant's criminal history, the State noted that, during the past 34 years, defendant was out of custody for approximately 7 years and 4 months, and during that time he committed 13 felony offenses and 3 misdemeanors. The offenses included burglary, armed robbery, theft, criminal damage to property, residential burglary, forgery, unlawful possession of a stolen motor vehicle, unlawful possession of a controlled substance, and domestic battery. The State maintained: "He's undeterrable, he's unrehabilitatable [*sic*]." According to the State, the safety of society warranted a maximum sentence, because "his history indicates that every second that he's not in custody, he's going to be victimizing society and committing felony crimes."

¶ 8 In response, defense counsel argued in mitigation that defendant suffered from mental illness. Counsel argued that defendant had been diagnosed with schizophrenia approximately 14 years earlier and that he had been prescribed antipsychotic medication. Counsel further argued

that defendant had admitted to having a drug and alcohol problem, and defendant had been using heroin three times per week prior to the offense. Counsel maintained that defendant's drug problems caused him to forget to take his medications. Counsel also noted defendant's advanced age and his prostate cancer diagnosis. Counsel argued that a six-year sentence was "appropriate under the circumstances because of [defendant's] mental illness."

¶ 9 In allocution, defendant stated: "My mental illness has affected me for a long period of time and it affected me the date that I committed that crime, the burglary, and I am just asking for forgiveness." He stated further: "You know, I am 51 years old, I have prostate cancer, and I don't know how long—I know I got more years behind me than I do in front of me, so I'm just asking for another chance."

¶ 10 In sentencing defendant, the trial court noted in aggravation "the dangerous situation that was created for the security guard in causing or threatening serious harm," defendant's substantial criminal history, and the need for deterrence. The court also considered defendant's mental-health history set forth in the KCDC report. The court further stated:

"[Defendant] has an extensive history here, and he has spent much more time in the Department of Corrections than he has spent on the street, and it would appear that a part of the time on the street certainly has been spent with the use of drugs and alcohol; and I'm sure that they cannot be—that use and that mental illness could not be separated from these offenses, but the fact that he has them, as [defense counsel] says, is not an excuse, but it is something, certainly in mitigation, to be considered, as is his medical history, although, the PSI does not give me—I don't have too much information, other than he has a diagnosis.

I don't really have too much information about it, other than that; so, this struggle that the defendant has had with mental illness and substance abuse has been one that has affected him and has affected a lot of other people, and in a very detrimental way.”

Thereafter, the court sentenced defendant to 15 years in prison, followed by a 3-year period of mandatory supervised release. The court also ordered restitution based on the documentation submitted by the State and imposed certain fees and fines.

¶ 11 Defendant moved for reconsideration of his sentence, asking the trial court to consider his history of mental illness and the fact that he was not taking his prescribed medication when he committed the offense. The trial court denied the motion. The court stated that it was aware of the issues presented in the motion and that it considered them in mitigation. The court stated: “I have considered these items and would not change the sentence at this time.” No direct appeal was filed.

¶ 12 On October 20, 2011, defendant filed a *pro se* postconviction petition. Because the petition was not dismissed within 90 days, the trial court appointed counsel for second-stage proceedings. Postconviction counsel filed an addendum to the petition. Counsel did not adopt any of the issues raised in defendant's *pro se* motion. Instead, counsel argued, *inter alia*, that trial counsel was ineffective in that counsel failed to provide the trial court with additional information about defendant's mental-health issues at the hearing on the motion for reconsideration of defendant's sentence. Postconviction counsel attached to the addendum records from Loretto Hospital and from the Department of Corrections. The State did not file a motion to dismiss but orally argued against the merits of the postconviction petition.

¶ 13 Following argument, the trial court dismissed the petition. The court noted that the sentencing court was clearly aware of defendant's psychological condition. Thus, the court

found that defendant had not established a reasonable probability that further evidence or arguments at the hearing on the motion to reconsider the sentence would have affected the sentence.

¶ 14 Defendant filed a timely notice of appeal.

¶ 15 II. ANALYSIS

¶ 16 Defendant argues that he is entitled to an evidentiary hearing because he made a substantial showing that his counsel was ineffective for failing to present mental-health evidence at the hearing on his motion for reconsideration of his sentence “where the trial court had specifically commented on the dearth of such evidence at the sentencing hearing.” We disagree.

¶ 17 The Post-Conviction Hearing Act (the Act) (725 ILCS 5/122-1 *et seq.* (West 2010)) provides a three-stage process for the adjudication of postconviction petitions and permits a defendant to mount a collateral attack on his conviction and sentence based on violations of his constitutional rights. *People v. Erickson*, 183 Ill. 2d 213, 222 (1998). If a petition survives first-stage review, it proceeds to the second stage, at which an indigent defendant is entitled to appointed counsel, the petition may be amended, and the State may answer or move to dismiss the petition. *People v. Gaultney*, 174 Ill. 2d 410, 418 (1996). If the court does not dismiss the petition, the petition advances to the third stage, where the court conducts an evidentiary hearing. *Id.*

¶ 18 Here, defendant’s petition was dismissed at the second stage. An appeal from a second-stage dismissal is reviewed *de novo*. *People v. Adams*, 373 Ill. App. 3d 991, 993 (2007). At the second stage, a defendant must make a “substantial showing” of a constitutional violation. *People v. Addison*, 371 Ill. App. 3d 941, 946 (2007). In determining whether a defendant has made a substantial showing of a constitutional violation, “all well-pleaded facts in the petition

and affidavits are to be taken as true, but nonfactual and nonspecific assertions which merely amount to conclusions are not sufficient.” *People v. Rissley*, 206 Ill. 2d 403, 412 (2003).

¶ 19 To succeed on a claim of ineffective assistance of counsel, a defendant must show that his counsel’s performance fell below an objective standard of reasonableness and that there is a reasonable probability that, but for counsel’s unprofessional errors, the result of the proceeding would have been different. *Strickland v. Washington*, 466 U.S. 668, 688, 694 (1984). To satisfy the first part of the test, a defendant must show that his attorney’s performance fell below an objective standard as measured by prevailing professional norms. *People v. Miller*, 346 Ill. App. 3d 972, 982 (2004). However, even if counsel’s performance was deficient, “any deficiencies in counsel’s performance must be prejudicial to the defense in order to constitute ineffective assistance under the Constitution,” as “[a]n error by counsel, even if professionally unreasonable, does not warrant setting aside the judgment of a criminal proceeding if the error had no effect on the judgment.” *Strickland*, 466 U.S. at 691-92.

¶ 20 In the present case, defendant has not made a substantial showing of a claim of ineffective assistance of counsel. First, he has not shown that defense counsel’s failure to submit the records from Loretto Hospital or from the Department of Corrections at the hearing on his motion for reconsideration of his sentence fell below an objective standard of reasonableness. We reject defendant’s argument that, during the sentencing hearing, the trial court “signal[ed]” to defense counsel that it did not have enough information about defendant’s mental-health issues. Defendant’s argument is based on the following comments by the trial court:

“[T]hat [drug and alcohol] use and that mental illness could not be separated from these offenses, but the fact that he has them, as [defense counsel] says, is not an excuse, but it is something, certainly in mitigation, to be considered, as is his *medical history*, although,

the PSI does not give me—I *don't have too much information, other than he has a diagnosis.*

I don't really have too much information about it, other than that; so, this struggle that the defendant has had with mental illness and substance abuse has been one that has affected him and has affected a lot of other people, and in a very detrimental way.”

(Emphases added.)

It is clear from the totality of the comments that the trial court was referring to information about defendant's medical history rather than defendant's mental-health history. Indeed, the court referenced defendant's "medical history" immediately before commenting that it did not "have too much information, other than [defendant] has a diagnosis." The court had a significant amount of information concerning defendant's mental illness, including a diagnosis, symptoms, and treatment. However, as for defendant's medical condition, the court knew only that defendant claimed to have prostate cancer. Thus, any claim that defense counsel was deficient for failing to respond to the court's "signal" and provide additional information concerning defendant's mental illness is without merit.

¶ 21 Even if counsel's failure to submit the information was deficient, defendant's claim of ineffective assistance of counsel fails for lack of prejudice. The trial court made clear both at sentencing and at the hearing on the motion to reconsider the sentence that it was well aware of defendant's history of mental illness and considered it as mitigating evidence when fashioning an appropriate sentence. Further, the records from Loretto Hospital were essentially duplicative of the KCDC fitness evaluation, and the records from the Department of Corrections, concerning treatment defendant received while incarcerated *after* being sentenced, could not have been

considered on the motion to reconsider. Thus, defendant cannot establish a reasonable probability that the sentence would have been any different had the records been submitted.

¶ 22

III. CONCLUSION

¶ 23 Accordingly, based on the foregoing, we affirm the dismissal of defendant's postconviction petition.

¶ 24 Affirmed.