

No. 1-14-1034

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IN THE
APPELLATE COURT OF ILLINOIS
FIRST JUDICIAL DISTRICT

THE PEOPLE OF THE STATE OF ILLINOIS,)	Appeal from the
)	Circuit Court of
Plaintiff-Appellant,)	Cook County.
)	
v.)	No. 09 CR 9024
)	
VICTOR SHORTERS,)	Honorable
)	James B. Linn,
Defendant-Appellee.)	Judge Presiding.

JUSTICE ROCHFORD delivered the judgment of the court.
Justices Cunningham and Delort concurred in the judgment.

ORDER

¶ 1 *Held:* Second-stage dismissal of defendant's postconviction petition and denial of his request for discovery are affirmed, where: (1) defendant's various assertions of ineffective assistance of trial counsel were either barred by principles of *res judicata* or unfounded; and (2) the circuit court properly denied defendant's discovery request.

¶ 2 After a bench trial, defendant-appellant, Victor Shorters, was convicted of two counts of criminal sexual assault and one count of unlawful restraint. He was then sentenced to a total of 17 years' imprisonment. On direct appeal, defendant's convictions for criminal sexual assault were affirmed, while his conviction and sentence for unlawful restraint were vacated. *People v. Shorters*, 2012 IL App (1st) 102359-U.

¶ 3 Pursuant to the Post-Conviction Hearing Act (720 ILCS 5/122-1 *et seq.* (West 2012)), defendant, thereafter, filed a postconviction petition contending that—for various reasons—his trial counsel provided ineffective assistance. The petition also requested that that the circuit court permit discovery—in the form of forensic testing of an article of clothing—in order to obtain new evidence that might support the contentions of ineffective assistance of trial counsel. At the second stage of the proceedings, the State responded by filing a motion to dismiss the petition. The circuit court both denied defendant’s discovery request and granted the State’s motion to dismiss the postconviction petition. Defendant has now appealed from those rulings, and for the following reasons we affirm.

¶ 4 I. BACKGROUND

¶ 5 Defendant was arrested on April 23, 2009, and a grand jury returned a five-count indictment against him on May 19, 2009. The indictment generally alleged that, on or about January 18, 2009, defendant committed the offenses of aggravated criminal sexual assault (two counts), criminal sexual assault (two counts), and unlawful restraint (one count). The matter proceeded to a bench trial in June of 2010. The trial proceedings and the evidence presented at trial were fully set out in our prior order, and need not be restated here. See *Shorters*, 2012 IL App (1st) 102359-U, ¶¶ 4-27. At the conclusion of that trial, defendant was found guilty of two counts of criminal sexual assault (one count involving vaginal sex, and one count involving oral sex) and a single count of unlawful restraint. The trial court then sentenced defendant to eight years’ imprisonment on each of the sexual assault counts, and one year of imprisonment for the unlawful restraint count. The sentences were ordered to be served consecutively.

¶ 6 Defendant filed a direct appeal from his convictions, contending that his guilt was not proven beyond a reasonable doubt and, alternatively, his conviction for unlawful restraint should

be vacated as it is a lesser-included offense of his other convictions. In an order entered on July 30, 2012, this court held that defendant's convictions for criminal sexual assault and unlawful restraint were supported by evidence proving his guilt beyond a reasonable doubt, but his conviction and sentence for unlawful restraint must be vacated as a lesser-included offense under the principles of the one-act, one-crime doctrine. *Id.* ¶ 1.

¶ 7 On August 6, 2013, defendant—represented by private defense counsel—filed a petition for postconviction relief. Therein, defendant asserted that his trial counsel provided ineffective assistance by, *inter alia*, failing to: (1) investigate and present the testimony of defendant's friend, Jericho Holmes, and defendant's mother, Vicki Shorters, to corroborate defendant's own trial testimony regarding events prior to and after the sexual assault; (2) perfect the impeachment of the victim with respect to whether she bit defendant's penis during the sexual assault, (3) properly understand the State's DNA evidence; before agreeing to enter into a misleading stipulation regarding that evidence; (4) have a sweatshirt the victim claimed defendant ripped during the assault submitted for forensic testing to determine if it had been ripped, or had been cut by a sharp instrument so as to suggest the victim manufactured evidence. With respect to defendant's claim regarding the sweatshirt, the petition also contained a discovery request asking the circuit court to allow defendant to have the sweatshirt examined and tested by an expert in order to obtain new evidence, and to allow the petition to be amended with any such new evidence in order to "provide for an adequate presentation of petitioner's contentions." Attached to defendant's petition were affidavits executed by defendant, Mr. Holmes, Ms. Shorters, defendant's postconviction counsel, and Scott Stoeffler, defendant's proposed forensic expert. Police reports related to the assault were also attached.

¶ 8 The State responded to defendant's petition by filing a motion to dismiss. Therein, the State argued that defendant's request to have the sweatshirt examined and tested amounted to nothing more than improper "Monday Morning Quarterbacking" and, more generally, defendant had failed to meet his burden of making a substantial showing that he had been provided with ineffective assistance of trial counsel.

¶ 9 Following a hearing on the petition, the circuit court denied defendant's discovery request and granted the State's motion to dismiss the petition, finding: (1) any additional evidence regarding the sweatshirt would not have been "helpful" in light of the fact that the condition of the sweatshirt was a "collateral matter" in light of the other evidence presented at trial; and (2) more generally, defendant had not met his burden of making a substantial showing that a reasonable probability existed that the outcome of trial would have been different had his trial counsel's performance been different. Defendant timely appealed.

¶ 10

II. ANALYSIS

¶ 11 On appeal, defendant contends that the circuit court incorrectly dismissed several of his postconviction claims of ineffective assistance of trial counsel without first holding an evidentiary hearing, and improperly denied his discovery request. We disagree.

¶ 12

A. Legal Framework and Standards of Review

¶ 13 As noted above, defendant filed the instant petition pursuant to the Post-Conviction Hearing Act, 720 ILCS 5/122-1 *et seq.* (West 2012). Our supreme court has summarized the procedures to be employed in evaluating such a petition as follows:

"The Post-Conviction Hearing Act *** provides a method by which persons under criminal sentence in this state can assert that their convictions were the result of a substantial denial of their rights under the United States Constitution or the Illinois

Constitution or both. [Citations.] A postconviction action is not an appeal from the judgment of conviction, but is a collateral attack on the trial court proceedings. Thus, issues raised and decided on direct appeal are barred by *res judicata*, and issues that could have been raised but were not are forfeited. An action for postconviction relief is initiated by the person under criminal sentence, who files a petition in the circuit court in which the original proceeding took place. As a result, most such petitions are filed *pro se* by persons who are incarcerated and lack the means to hire their own attorney.

In a noncapital case, a postconviction proceeding contains three stages. At the first stage, the circuit court must independently review the petition, taking the allegations as true, and determine whether ‘ “the petition is frivolous or is patently without merit.’ “ [Citation.] A petition may be summarily dismissed as frivolous or patently without merit only if the petition has no arguable basis either in law or in fact. [Citation.] This first stage in the proceeding allows the circuit court ‘to act strictly in an administrative capacity by screening out those petitions which are without legal substance or are obviously without merit.’ [Citation.] Because most petitions are drafted at this stage by defendants with little legal knowledge or training, this court views the threshold for survival as low. At this initial stage of the proceeding, there is no involvement by the State.

If the circuit court does not dismiss the petition as ‘frivolous or * * * patently without merit’ [citation], the petition advances to the second stage, where counsel may be appointed to an indigent defendant [citation], and where the State, as respondent, enters the litigation [citation]. It is at this point, not the first stage, where the postconviction petition can be said to be at issue, with both sides engaged and represented by counsel.

[Citation.] At this second stage, the circuit court must determine whether the petition and any accompanying documentation make ‘a substantial showing of a constitutional violation.’ [Citation]. If no such showing is made, the petition is dismissed. [Citation]. If, however, a substantial showing of a constitutional violation is set forth, the petition is advanced to the third stage, where the circuit court conducts an evidentiary hearing. [Citations].” *People v. Tate*, 2012 IL 112214, ¶¶ 8-10.

¶ 14 Here, defendant’s petition was prepared and filed by private counsel. After the circuit court found that the petition was sufficient to withstand an initial review, this matter proceeded to the second stage. “At the second stage of postconviction proceedings, the State may file a motion to dismiss the petition and the postconviction court must determine whether the petition and any accompanying documents make a substantial showing of a constitutional violation.” *People v. Graham*, 2012 IL App (1st) 102351, ¶ 31. At this stage, “[t]he postconviction court takes ‘all well-pleaded facts that are not positively rebutted by the trial record’ as true.” *Id.* (quoting *People v. Pendleton*, 223 Ill. 2d 458, 473 (2006)). The dismissal of a postconviction petition at the second stage is reviewed *de novo* (*id.*), and we may affirm such a second-stage dismissal “on any basis supported by the record.” *People v. Stoecker*, 384 Ill. App. 3d 289, 292 (2008).

¶ 15 All of the claims raised in defendant’s petition involve allegations that he received ineffective assistance of trial counsel. A claim of ineffective assistance of counsel is judged according to the two-prong test established in *Strickland v. Washington*, 466 U.S. 668 (1984). See *People v. Lawton*, 212 Ill. 2d 285, 302 (2004). In order to obtain relief under *Strickland*, a defendant must prove defense counsel’s performance fell below an objective standard of reasonableness and that this substandard performance caused defendant prejudice by creating a

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reasonable probability that, but for counsel's errors, the trial result would have been different. *People v. Wheeler*, 401 Ill. App. 3d 304, 313 (2010).

¶ 16 While the defendant must establish both prongs of this two-part test, a reviewing court need not address counsel's alleged deficiencies if the defendant fails to establish any prejudice. See *Strickland*, 466 U.S. at 687; *People v. Edwards*, 195 Ill. 2d 142, 163 (2001). Our supreme court has held that "*Strickland* requires actual prejudice be shown, not mere speculation as to prejudice." *People v. Bew*, 228 Ill. 2d 122, 135 (2008). A defendant has the burden of establishing any such prejudice. *People v. Glenn*, 363 Ill. App. 3d 170, 173 (2006). Thus, at the second stage of these postconviction proceedings, defendant had the burden of making a substantial showing that a reasonable probability exists that the outcome of trial would have been different had his trial counsel's performance been different. *People v. Harris*, 206 Ill. 2d 293, 307 (2002).

¶ 17 Finally, and with respect to defendant's appeal from the circuit court's denial of his discovery request, we note as follows:

“A trial court has inherent discretionary authority to order discovery in post-conviction proceedings. [Citations.] A court must exercise this authority with caution, however, because a defendant may attempt to divert attention away from constitutional issues which escaped earlier review by requesting discovery. [Citations.] Accordingly, the trial court should allow discovery only if the defendant has shown 'good cause,' considering the issues presented in the petition, the scope of the requested discovery, the length of time between the conviction and the post-conviction proceeding, the burden of discovery on the State and on any witnesses, and the availability of the evidence through other sources. [Citations.] We will

reverse a trial court's denial of a post-conviction discovery request only for an abuse of discretion. [Citation.] A trial court does not abuse its discretion in denying a discovery request which ranges beyond the limited scope of a post-conviction proceeding and amounts to a 'fishing expedition.' [Citation.]" *People v. Johnson*, 205 Ill. 2d 381, 408 (2002).

¶ 18

B. Discussion

¶ 19 We first address defendant's contention that the circuit court improperly dismissed his contention that his trial counsel provided ineffective assistance by failing to investigate and present the testimony of Mr. Holmes.

¶ 20 The evidence at trial established that the sexual assault took place in the basement of the victim's home, after both defendant and the victim attended a birthday party for the victim's sister at a nearby pub. The victim denied at trial that she had "initiated contact with another individual to have Victor Shorters show up at this party." Defendant specifically testified that the victim had invited him to the party.

¶ 21 In his affidavit in support of the petition, Mr. Holmes averred that he was called by the victim in January 2009, and invited to the party for the victim's sister. Mr. Holmes told the victim that he could not attend the party, but that defendant was with him and perhaps he would like to attend. According to the affidavit, the victim told Mr. Holmes to "put Victor on the phone, so I handed the phone to Victor. Victor spoke on the phone for a few minutes and I remember him say that he would try to 'be there.' " A few days later, the victim called Mr. Holmes to inform him that the location of the party had been moved from the sister's home to a pub. Mr. Holmes, himself, subsequently called defendant to inform him of the change. Lastly, Mr. Holmes contended that he was willing to testify at trial, but was never contacted. Defendant averred in

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his affidavit that he was invited to the party as described in Mr. Holmes' affidavit. Defendant also stated that he informed his trial counsel about this fact but, to the best of defendant's knowledge, no effort was made to contact Mr. Holmes or present his testimony.

¶ 22 Defendant contends on appeal that, in light of these averments, his petition made a substantial showing that a reasonable probability exists that the outcome of trial would have been different had his trial counsel investigated and presented the testimony of Mr. Holmes, which would have impeached the victim's testimony, lessened her credibility, and provided support for defendant's version of events. We disagree.

¶ 23 Defendant faces significant legal headwind in asserting such an argument. It is well understood that "[g]enerally, the decision whether or not to cross-examine or impeach a witness is a matter of trial strategy which will not support a claim of ineffective assistance of counsel. *** Defendant can only prevail on an ineffectiveness claim by showing that counsel's approach *** was objectively unreasonable." *People v. Pecoraro*, 175 Ill. 2d 294, 326-27 (1997). We fail to see why it was objectively unreasonable to fail to present Mr. Holmes' testimony, when it did not actually dispute any of the victim's testimony.

¶ 24 At trial, the victim never specifically denied inviting defendant to the party. Rather, she specifically denied she "initiated contact with another individual to have Victor Shorters show up at this party." The information contained in the affidavits does not challenge this denial, where both defendant and Mr. Holmes stated that the victim called to speak with Mr. Holmes, not defendant, and only asked to speak to defendant after Mr. Holmes informed her of defendant's presence. Mr. Holmes' affidavit further indicated that, when the location of the party was changed, the victim called to inform Mr. Holmes, not defendant. It was then Mr. Holmes, and not the victim, who informed defendant about the change in location, and there is no indication

that he did so on behalf of the victim. Nothing about these averments impeaches the victim's testimony that she never "initiated contact with another individual to have Victor Shorters show up at this party." It was, therefore, not objectively unreasonable that defendant's trial counsel failed to present Mr. Holmes' testimony at trial, and this claim was properly dismissed.

¶ 25 We next consider defendant's contention that the circuit court improperly dismissed his contention that his trial counsel provided ineffective assistance by failing to investigate and present the testimony of Ms. Shorters.

¶ 26 At trial, defendant testified that after he and the victim engaged in consensual sex, he left the victim's basement, called his mother for a ride home, and waited on the victim's front porch for an hour until his mother picked him up. In her affidavit, Ms. Shorters averred that she was called by her son very early in the morning of January 18, 2009. Defendant explained that he was at a woman's home, and he needed a ride home. An hour later, Ms. Shorters "arrived at the house where Victor was waiting." Ms. Shorters also averred: "Although I do not now remember the specific address of the house where I picked Victor up that morning or exactly how I got there, my memory of those details was much better shortly after Victor was arrested." Ms. Shorters contended that she was never asked about these details by defendant's trial counsel, despite the fact that she spoke with defense counsel, attended every court date, and was told by defense counsel that her testimony would not be necessary. In his affidavit, defendant averred that, while his mother was willing to testify consistently with her affidavit and attended his trial, she was never called as a witness.

¶ 27 While defendant contends that these affidavits establish that his trial counsel improperly failed to investigate and present the testimony of Ms. Shorters, and that defendant was prejudiced

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thereby because it deprived the trial court of evidence supporting defendant's version of events, we disagree.

¶ 28 It must be noted that effective assistance of counsel refers to competent, not perfect, representation. *People v. Palmer*, 162 Ill. 2d 465, 476 (1994). Thus, a petitioner must overcome the presumption that the challenged conduct might be considered sound trial strategy under the circumstances. *People v. Mims*, 403 Ill. App. 3d 884, 890 (2010). "Decisions involving what evidence to present and which witnesses to call fall within the broad category of trial strategy and are not subject to a claim of ineffective assistance unless they deprive a defendant of a meaningful adversary proceeding." *People v. Smith*, 2012 IL App (1st) 102354, ¶ 86 (citing *People v. Hamilton*, 361 Ill. App. 3d 836, 847 (2005)).

¶ 29 Here, the affidavits presented to the circuit court do not indicate that defense counsel failed to speak with Ms. Shorters, or that defense counsel spoke to her (and/or defendant himself), learned about her picking up her son at the victim's home, and yet still decided not to present her testimony at trial. Ms. Shorters specifically contends that she did speak to defense counsel. While she contended that defense counsel never asked about her activities on the date of the assault, she does not contend that she was never asked about any exculpatory evidence she might have or that she volunteered any such evidence. For his part, defendant does not specifically aver that he made his trial counsel aware of the fact that his mother picked him up at the victim's own home. We see no showing of objectively unreasonable behavior in light of this record.

¶ 30 Even if the failure to present Ms. Shorters' testimony was unreasonable, defendant's motion does not establish a substantial showing that a reasonable probability exists that the outcome of trial would have been different had his trial counsel investigated and presented her

testimony. In her affidavit, Ms. Shorters confesses that she cannot remember the exact location where she picked up her son. Moreover, while she believed that her memory was “much better shortly after Victor was arrested,” she does not specifically contend that she would have been able to have provided that information if she had only been asked by defense counsel prior to trial.

¶ 31 We reiterate that “*Strickland* requires actual prejudice be shown, not mere speculation as to prejudice,” (*Bew*, 228 Ill. 2d at 135), and a defendant has the burden of establishing any such prejudice (*Glenn*, 363 Ill. App. 3d at 173). On this record, defendant has not met his burden of making a substantial showing that he was prejudiced by the failure to present his mother as a witness at trial, and this claim was properly dismissed.

¶ 32 We next consider defendant’s contention that the circuit court improperly dismissed the contention that his trial counsel provided ineffective assistance by failing to perfect the impeachment of the victim with respect to whether she indicated to police that she bit defendant’s penis during the sexual assault.

¶ 33 At trial, the victim testified that defendant forced her to perform oral sex. She further testified that, at that time, defendant “grabbed me around the throat and said if I bite him he was going to kill me.” On cross-examination, the victim specifically denied that she ever told anyone, including the police, that she had bitten defendant’s penis during the attack.

¶ 34 In his affidavit attached to the petition, defendant averred that he discussed with his trial counsel the fact that police reports reflected that the victim had, in fact, told the police that she had bitten defendant’s penis during the assault. Police reports attached to the petition confirm this averment, and also indicated that the victim stated that defendant began choking her

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thereafter. Defendant's petition contends that he was prejudiced by the failure of his trial counsel to perfect the impeachment of the victim's trial testimony in this regard. We disagree.

¶ 35 Again, the decision whether or not to impeach a witness is a matter of trial strategy which will not support a claim of ineffective assistance of counsel unless defense counsel's approach was objectively unreasonable. *Pecoraro*, 175 Ill. 2d at 326-27. We agree with the State that defense counsel may well have "strategically believed that drawing more attention to this violent exchange and having officers testify to what [the victim] told them occurred would have weakened defendant's version that the encounter was consensual."

¶ 36 Moreover, we note that the victim's trial testimony was that defendant choked her, then threatened to kill her if she bit him, and that she never told the police that she had bitten defendant's penis. The police reports indicate that the victim did tell police that she bit defendant's penis and that he then started choking her. We find that the distinction between these two versions of events, in light of all the evidence, was relatively minor and does not support defendant's assertion that he made a substantial showing of any prejudice resulting by the failure to perfect this impeachment. The circuit court properly dismissed this claim.

¶ 37 We next consider defendant's contention that the circuit court improperly dismissed the contention that his trial counsel provided ineffective assistance by failing to properly understand the State's DNA evidence before agreeing to enter into a misleading stipulation regarding that evidence. We, again, disagree.

¶ 38 At trial, defense counsel and the State agreed to enter a number of stipulations into the record as evidence. In one such stipulation, it was stipulated that three DNA profiles were recovered from a t-shirt worn by defendant and recovered from the victim's home. It was further

stipulated that while the victim could not be excluded from one of those profiles, defendant was a match for one of the three profiles recovered.

¶ 39 In his petition, defendant contended that this stipulation was misleading because the actual results of the DNA testing only indicated that neither the victim nor defendant could be excluded from having contributed to one of the profiles, and that the victim was actually more of a “match” for one of the profiles than was defendant. Defendant then contended that he was prejudiced by this misleading stipulation, because the actual DNA test results support his version of events and refute the version provided by the victim. Defendant specifically notes that while the victim testified that defendant removed his shirt before the sexual assault, defendant testified that the victim kissed his shirt during the course of a consensual sexual encounter. Defendant summarizes his argument by stating: “In short if [the victim’s] version of events was true, her DNA would not have been found on the shirt.”

¶ 40 We reject this argument for a number of reasons. First, we find that it is barred by the principles of *res judicata* in light of the argument defendant raised on direct appeal. *Tate*, 2012 IL 112214, ¶ 8 (issues raised and decided on direct appeal are barred by principles of *res judicata*). In his direct appeal, despite acknowledging in his appellate brief that “the DNA added little to the State's case,” defendant contended that the fact that a DNA pattern consistent with the victim was found on the t-shirt he left in the basement was consistent with his version of events. In rejecting defendant’s contention that this fact undermined the finding of guilt, this court stated that the “DNA pattern was not a complete match and, even assuming it was [the victim’s] DNA, defendant has not demonstrated why it is so improbable that her DNA was left on his shirt in some other fashion during the course of the sexual assault.” *Shorters*, 2012 IL App (1st) 102359-U, ¶ 42. Thus, even if we assume that the stipulation was misleading, defendant’s contention that

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stronger evidence of the presence of the victim's DNA on the t-shirt would have amounted to significant evidence of defendant's innocence has already been considered and rejected by this court.

¶ 41 Moreover, even if we did not apply the principles of *res judicata* here, we would still conclude that defendant has not established any possible prejudice resulting from the purportedly misleading stipulation. At trial, it was undisputed that defendant and the victim hugged when they met at the pub and danced together at the party. Furthermore, while the victim testified that defendant took off his shirt before he sexually assaulted her in her basement, she also testified that before the assault she and defendant had a physical altercation in which defendant grabbed her, struck her, and pinned her down on a couch. Defendant himself testified that he and the victim danced together in the basement and had a physical altercation before he took off his shirt. On this record, we simply do not find that defendant has shown a reasonable probability the outcome of trial would have been different had his trial counsel introduced any stronger evidence that the victim's DNA was on defendant's t-shirt. This claim was properly dismissed.

¶ 42 Finally, we consider defendant's contention that the circuit court abused its discretion in denying his discovery request to have a sweatshirt the victim claimed defendant ripped during the assault submitted for forensic testing to determine if, rather, it had been cut by a sharp instrument so as to indicate the victim manufactured evidence. Defendant contends that he needed the results of such testing to support his contention that his trial counsel provided ineffective assistance by failing to have similar testing of the sweatshirt completed before trial. We disagree.

¶ 43 First, we find that the denial of this discovery request was proper because defendant's underlying argument is barred by the principles of *res judicata*, in light of the arguments

defendant raised on direct appeal. As we noted in our prior decision, in that appeal defendant contended that “the clothes [the victim] testified she was wearing at the time of the incident, introduced as exhibits at trial, also cast doubt on her testimony.” *Id.* ¶ 40. Specifically, defendant argued that “while the sweatshirt introduced at trial does contain a rip in the front consistent with [the victim’s] testimony about the attack, that rip ‘appears to be a very clean, smooth, straight cut, such as *might* be made by scissors.’ (Emphasis added.)” *Id.* In rejecting this argument, and only after physically examining the sweatshirt itself, this court stated:

“We do not accept defendant's line of argument on this issue. There was *absolutely* no evidence presented at trial that could possibly support defendant's contention that [the victim] manufactured evidence. Indeed, defendant[] cite[s] to nothing but the clothes themselves to support this argument. After reviewing that evidence, however, we do not find that the condition of the clothes actually supports defendant's assertions in any way.” (Emphasis in original.) *Id.*

¶ 41.

¶ 44 We fail to see how defendant can possibly establish that it was objectively unreasonable for his trial counsel to fail to submit the sweatshirt for forensic testing, when we have already concluded that there was no evidence, including the condition of the sweatshirt itself, which would support a conclusion that such testing was warranted. Moreover, even if another strategy may have been better, or that another lawyer would have handled the case differently, this is not proof defendant's trial counsel was incompetent. See *People v. Negron*, 297 Ill. App. 3d 519, 538 (1998) (“Neither mistakes in strategy nor the fact that another attorney with the benefit of hindsight would have handled the case differently indicates the trial lawyer was incompetent.”).

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¶ 45 In light of our prior findings and the high burden defendant is faced with, therefore, we conclude that he could not possibly establish that it was objectively unreasonable for his trial counsel to fail to submit the sweatshirt for forensic testing. It, therefore, follows that the denial of defendant's discovery request seeking evidence in support of that assertion could not possibly amount to an abuse of discretion.

¶ 46

III. CONCLUSION

¶ 47 For the foregoing reasons, we affirm both the circuit court's dismissal of defendant's postconviction petition and its denial of defendant's discovery request.

¶ 48 Affirmed.