

No. 1-14-1253

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).

IN THE
APPELLATE COURT OF ILLINOIS
FIRST JUDICIAL DISTRICT

THE PEOPLE OF THE STATE OF ILLINOIS,)	Appeal from the
)	Circuit Court of
Plaintiff-Appellee,)	Cook County.
)	
v.)	Nos. 08 CR C6-62010,
)	08 CR C6-62121
)	
ANTWON FERGUSON,)	Honorable
)	Michele M. Simmons,
Defendant-Appellant.)	Judge Presiding.

JUSTICE HARRIS delivered the judgment of the court.
Presiding Justice Cunningham and Justice Connors concurred in the judgment.¹

ORDER

Held: We affirm the order of the trial court dismissing defendant's amended post-conviction petition. However, we order a correction to defendant's *mittimus* to reflect 42 of days of additional presentence credit.

¹ Due to the death of Justice Liu, Presiding Justice Cunningham will be acting in her place.

¶ 1 Defendant, Antwon Ferguson, pled guilty to one count of aggravated vehicular hijacking involving the use of a firearm (720 ILCS 5/18-4(a)(4) (West 2014)), one count of aggravated vehicular hijacking (720 ILCS 5/18-4(a)(3) (West 2014)) and one count of aggravated unlawful use of a weapon (720 ILCS 5/24-1(a)(4) (West 2014)). After pleading guilty to the three charges, the trial court sentenced defendant to 22 years for each hijacking offense and three years for the aggravated unlawful use of a weapon. On July 23, 2012, defendant filed a petition to withdraw guilty plea and vacate sentence. On September 17, 2012, after a hearing, the trial court denied it as untimely. On January 7, 2013, defendant filed a *pro se* post-conviction petition, alleging that his sentence violated the proportionate penalties clause. On February 8, 2013, the trial court docketed defendant's petition for second stage post-conviction proceeding. On August 22, 2013, private counsel filed an amended post-conviction petition alleging: (1) ineffective assistance of trial counsel; (2) improper denial of defendant's motion for order *nunc pro tunc*; (3) the 15 year firearm sentencing enhancement violated the proportionate penalties clause; and (4) was denied the benefit of a bargain that he would receive 7 years of imprisonment for the hijacking that did not involve a firearm. On October 4, 2013, the People filed a motion to dismiss the amended post-conviction petition. On March 7, 2014, after holding a hearing and listening to arguments, the trial court dismissed defendant's amended post-conviction petition. Defendant filed a notice of appeal on April 8, 2014.

¶ 2 Defendant has appealed the dismissal of his amended post-conviction petition and raises before this court the following issues: (1) whether the trial court erred in dismissing the amended post-conviction petition; and (2) whether the trial court erred in sentencing defendant with the firearm enhancement because he did not have a firearm and was neither charged with nor found guilty on a theory of accountability. For the following reasons we affirm the dismissal of

defendant's amended post-conviction petition. Furthermore, Defendant has waived review of the second issue by failing to raise it below. However, we order defendant's *mittimus* corrected to accurately reflect the time served before conviction.

¶ 3

JURISDICTION

¶ 4 We initially dismissed this appeal as untimely, however in an order dated May 4, 2016, the Illinois Supreme Court, in the exercise of its supervisory authority, ordered the prior order vacated and for us to consider the merits of defendant's appeal. Accordingly, this appeal follows.

¶ 5

BACKGROUND

¶ 6 On September 29, 2008, defendant was arrested for aggravated unlawful use of a weapon. On October 21, 2008, defendant appeared at the Markham Courthouse on the weapon charge. After the hearing, the defendant was arrested by the Dolton Police Department in connection with two vehicular hijackings.

¶ 7 The first vehicular hijacking occurred on December 1, 2007, when the defendant and an accomplice confronted Shanese Turner with a firearm and stole her vehicle from a gas station in Dolton, Illinois. In connection with this case, on December 1, 2008, the People charged defendant with aggravated vehicular hijacking and armed robbery. (Case No. 08 CR C6-62010).

¶ 8 The second vehicular hijacking occurred on July 3, 2008, when defendant confronted the victim, Tiffany Groves, with a pellet gun and stole her vehicle from the same gas station where the first hijacking occurred. On December 11, 2008, in connection with this case, the People charged defendant with aggravated vehicular hijacking, vehicular hijacking, and armed robbery. (Case No. 08 CR C6-62121).

¶ 9 After being arrested at the Markham courthouse, defendant was transported to the Dolton Police station by Detective Crudup, who was investigating the July 2008 hijacking. Prior to

speaking with the defendant, Detective Crudup read *Miranda* warnings to defendant, who indicated that he understood each and every right listed. Defendant then spoke with Detective Crudup for 40 minutes, during which defendant did not invoke his right to remain silent. Following that interview, a Detective Frasure, also from the Dolton Police Department, interviewed the defendant regarding the December 2007 hijacking. Before commencing the interview, Detective Frasure read defendant his *Miranda* rights. After a brief conversation, Detective Frasure asked defendant if he would rather speak to an assistant state's attorney. After indicating that he would, Detective Frasure terminated the interview.

¶ 10 The following day Assistant State's Attorney Carlstedt interviewed defendant. ASA Carlstedt informed defendant of his *Miranda* rights, after which defendant indicated that he understood them and signed a waiver form. Defendant then provided a handwritten statement regarding both the December 2007 and July 2008 hijackings.

¶ 11 On December 15, 2009, defendant filed a motion to suppress statements alleging that officers obtained his statements as a result of questioning that continued after defendant had decided to consult with his attorney. On October 21, 2010, defendant filed a supplemental motion to suppress statements alleging that the officers obtained his statements following his invocation of his right to remain silent. Defendant further alleged that Detective Frasure overcame his freewill. Defendant did not re-allege his initial motion to suppress claim that his statements were obtained after his request for counsel. On June 28, 2011 and September 20, 2011, the trial court heard testimony and argument on defendant's supplemental motion to suppress. The court heard testimony from Detective Crudup, Detective Frasure, and the defendant, while the testimony of ASA Carlstedt was stipulated to by the parties. After listening to the witnesses and arguments from the parties, the court denied defendant's supplemental

motion to suppress. The Court found defendant had waived his right to remain silent, waived his right to an attorney, and spoke with the detectives voluntarily.

¶ 12 On November 10, 2011, the defendant agreed to plead guilty in all three of his pending cases. For the December 2007 hijacking, the court sentenced defendant to 22 years of imprisonment with presentencing credit for 140 days. For the July 2008 hijacking, defendant was sentenced to 22 years of imprisonment with presentencing credit for 140 days. Finally, defendant was sentenced to three years imprisonment for the unlawful use of a weapon charge with presentencing credit for 147 days. All three sentences to run concurrently.

¶ 13 On June 26, 2012, defendant filed a motion for an order *nunc pro tunc*, requesting 210 days of presentencing credit in the July 2008 hijacking. On July 16, 2012, the trial court considered and denied defendant's motion. On July 23, 2012, defendant filed a *pro se* petition to withdraw guilty plea and vacate sentence in his two aggravated vehicular hijacking cases. Defendant alleged that on November 15, 2011 he had instructed his attorney to file a petition to withdraw his guilty plea and his attorney was ineffective because he had failed to do so. After a hearing on the matter, the trial court denied defendant's petition to withdraw guilty plea as untimely.

¶ 14 On January 7, 2013, defendant filed a *pro se* post-conviction petition alleging that his sentence violated the proportionate penalties clause. On February 8, 2013 the trial court docketed defendant's petition for a second stage post-conviction proceeding. Thereafter, on March 8, 2013, a new attorney filed an appearance on behalf of defendant. On August 22, 2013, new counsel for defendant filed an amended post-conviction petition alleging: (1) trial counsel was ineffective; (2) the trial court improperly denied defendant's motion for order *nunc pro tunc*; (3) the 15 year firearm sentencing enhancement violated the proportionate penalties clause; and

(4) defendant had been denied the benefit of a bargain that he would receive 7 years of imprisonment when he was sentenced to 22 years of imprisonment in the July 2008 hijacking. On October 4, 2013, the People filed a motion to dismiss defendant's amended post-conviction petition. On March 7, 2014, the trial court held a hearing on the motion to dismiss. After hearing the arguments from the parties, the trial court granted the motion to dismiss defendant's amended post-conviction petition.

¶ 15 Defendant filed a notice of appeal on April 8, 2014. We initially dismissed defendant's appeal for lack of jurisdiction as the notice of appeal was untimely, however, the Illinois Supreme Court, in the exercise of its supervisory authority, has since directed us to consider the merits of defendant's appeal.

¶ 16

ANALYSIS

¶ 17 Defendant appeals the dismissal of his post-conviction petition at the second stage. It is universally recognized that a post-conviction petition proceeding is not a direct appeal, but rather is a collateral attack on a prior judgment. *People v. Barrow*, 195 Ill. 2d 506, 519 (2001). The purpose of the proceeding is to allow inquiry into constitutional issues relating to the conviction or sentence that were not, and could not have been, determined on direct appeal. *People v. Griffin*, 178 Ill. 2d 65, 72-73 (1997).

¶ 18 The dismissal of a post-conviction petition is warranted at the second stage of the proceedings 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. Coleman*, 183 Ill. 2d 366, 382 (1998). At that stage, all factual allegations that are not positively rebutted by the record are accepted as true. *People v. Childress*, 191 Ill. 2d 168, 174 (2000). An evidentiary hearing is warranted only when the allegations of the post-conviction petition, supported when

necessary by the trial record or accompanying affidavits, make a substantial showing that the defendant's constitutional rights have been violated. *People v. Hopley*, 182 Ill. 2d 404, 428 (1998). The dismissal of a post-conviction petition without an evidentiary hearing is reviewed *de novo*. *Coleman*, 183 Ill. 2d at 388-89.

¶ 19 In his first argument, defendant argues count I of his post-conviction petition should not have been dismissed because it sufficiently alleged a due process violation. Count I of defendant's petition alleges the trial court failed to comply with Illinois Supreme Court Rule 604(d) when it failed to appoint counsel to review and present the motion to withdraw his guilty plea. Defendant also alleges the court violated Rule 605(b) when it failed to advise him of his right to appeal.

¶ 20 Illinois Supreme Court Rules 604 and 605 deal with the procedures required to be followed to appeal a criminal conviction and the admonishments a trial court is required to give a criminal defendant. Rule 604(d) provides that no appeal from a guilty plea will be allowed unless the defendant moves to withdraw the guilty plea and vacate the judgment within 30 days of the imposition of sentence. Ill. S. Ct. R. 604(d) (eff. Mar. 8 2016). It further provides that "the trial court shall then determine whether the defendant is represented by counsel, and if the defendant is indigent and desires counsel, the trial court shall appoint counsel. *Id.*

¶ 21 Rule 605(b) requires that upon a plea of guilty, the trial court shall advise defendant: (1) of a right to appeal; (2) that prior to an appeal, within 30 days of the imposition of sentence, a written motion must move to withdraw the plea and vacate the judgment; (3) that if the motion is allowed, the sentence and judgment will be vacated and trial will be set; (4) the State may reinstate previously dismissed charges; (5) if the defendant is indigent, a copy of transcript of the proceedings will be provided; and (6) that in any appeal from a guilty plea any issue not raised in

a motion to reconsider or motion to vacate judgment and withdraw plea are deemed waived. Ill. S. Ct. R. 605(b) (eff. Oct. 1, 2001).

¶ 22 The circuit court did not err in dismissing count I of defendant's post-conviction petition because there was no due process violation. The record demonstrates the defendant was thoroughly admonished regarding his rights to appeal following the entry of his guilty pleas in compliance with Rules 604(d) and 605(b). After admonishing him of his rights under Rules 604(d) and 605(b) the court inquired as to whether he understood his rights under the rules, and defendant answered in the affirmative. Next, as defendant admits, his motion to withdraw his guilty plea was filed more than 30 days after the entry of his guilty plea. Rule 604(d) requires that any motion to withdraw or reconsider be filed with the circuit court within 30 days of the imposition of sentence. Ill. S. Ct. R. 604(d) (eff. Feb. 6, 2013). After the 30 day period has expired, and absent an extension of time based on good cause, the circuit court loses jurisdiction to hear the motion. *People v. Flowers*, 208 Ill. 2d 291, 300-01 (2003). Defendant did not file his motion to withdraw within 30 days; accordingly the trial court was without jurisdiction to consider it. Because the court lacked the jurisdiction to even consider the motion, it was not required to appoint counsel as defendant argues.

¶ 23 The record does not support his claim that he asked his trial counsel to file a motion to withdraw. The affidavit attached to his amended post-conviction petition alleges defendant asked his attorney to file a motion to withdraw on November 15, 2011. However, this allegation is not supported by the record. Defendant entered his guilty plea and was sentenced on November 11, 2011. Defendant was brought back to court on November 15, 2011, in order to allow the People to amend the *mittimus* to correct a statutory citation. In an exchange between defendant and the trial court, the defendant again pled guilty. Moreover, he stated he had no

questions for the court. After the defendant did file his late motion to withdraw his guilty plea, the trial court questioned defendant's attorney regarding the motion. Defendant's attorney stated that at no time did defendant request he file a motion to withdraw his guilty plea. At that time, defendant even admitted to remembering the courts Rule 604 and Rule 605 admonishments.

¶ 24 Based on the relevant case law and the record before us, the trial court did not err in dismissing count I of defendant's post conviction petition.

¶ 25 Count II of defendant's post-conviction petition alleges he was denied credit for time served, and thus will be required to serve more time than required by law. Defendant also alleges this as part of his ineffective assistance of counsel claim. The People agree that defendant's *mittimus* should be corrected to reflect 42 additional days of presentencing credit. We need not consider the issues of a substantial constitutional violation or ineffective assistance of counsel because we can correct those on appeal. Pursuant to Illinois Supreme Court Rule 615(b)(1), a reviewing court may "reverse, affirm, or modify the judgment or order from which the appeal is taken." Ill. S. Ct. R. 615(b)(1) (eff. July 1, 2013). Both the defendant and the People agree that the defendant's *mittimus* should be corrected to reflect an additional 42 additional days of presentencing credit. Accordingly, pursuant to Rule 615(b)(1), we order the Clerk of the Circuit Court of Cook County to correct defendant's *mittimus* to reflect an additional 42 additional days of presentencing credit. See *People v. Johnson*, 385 Ill.App.3d 585, 609 (2008) (reviewing court can correct a *mittimus* at any time).

¶ 26 Next, defendant raises two issues concerning his sentencing. Defendant contends that the firearm enhancement in case 08 C6 62010 was void because it had been held to be unconstitutional. Defendant also contends he had been promised a sentence of 7 years of imprisonment in the pellet gun case (08 C6 62121) but was actually sentenced to 22 years.

¶ 27 We reject defendant's argument concerning the unconstitutionality of the firearm enhancement at the time of sentencing. Defendant's argument relies on *People v. Andrews*, 364 Ill. App. 3d 253 (2006), which held that section 18-4(a)(4) imposed disproportionate penalties on persons found guilty of aggravated vehicular hijacking rather than armed violence predicated on vehicular hijacking, although the two crimes had identical elements. Prior to the commission of his vehicular hijacking in case 08 C6 62010 (committed December 1, 2007), the General Assembly enacted Public Act 95-688 (eff. Oct. 23, 2007), which eliminated the proportionate penalties problem for aggravated vehicular hijacking by eliminating vehicular hijacking as a predicate offense for armed violence. P.A. 95-688 (eff. Oct. 23, 2007) amending 720 ILCS 5/33A-3. By amending the armed violence statute to eliminate the crime with the disproportionate penalty, the General Assembly revived the crime of aggravated vehicular hijacking. Defendant argues that the issue remained unsettled until 2013 when the Illinois Supreme Court ruled in *People v. Blair*. 2013 IL 114122.

¶ 28 This argument ignores that it was the General Assembly that cured the constitutional deficiencies and it does not take a court of review to deem a legislative act constitutional. In *People v. Williams*, this court stated, "the Illinois legislature cured the proportionate penalties clause violations explained in *People v. Hauschild*, 226 Ill. 2d 63 (2007), and *People v. Andrews*, 364 Ill. App. 3d 253 (2006), by excluding armed robbery and aggravated vehicular carjacking as predicate offenses to the armed violence statute. Thus, as of October 23, 2007, the effective date of Public Act 95-688, the constitutional infirmities for the armed robbery, aggravated vehicular hijacking, and armed violence statutes addressed by the *Hauschild* and *Andrews* courts were no longer present." *People v. Williams*, 2012 IL App (1st) 100126, ¶ 52. Because defendant committed his crime after the General Assembly had cured the constitutional defect, the firearm

enhancement sentence was properly applied to him. The fact that a court of review found the amended statute constitutional at a later date is of no consequence.

¶ 29 Defendant also contends he had been promised a sentence of 7 years of imprisonment in the pellet gun case (08 C6 62121) but was actually sentenced to 22 years. However, this argument is not supported by the record. Rather, the record indicates the defendant entered into an open guilty plea, and therefore the People promised defendant no specific sentence. An open guilty plea occurs where a defendant pleads guilty "without receiving any promises from the State in return," and where the trial court then "exercises its discretion and determines the sentence to be imposed." *People v. Evans*, 174 Ill. 2d 320, 332 (1996). The trial court specifically indicated that "this was not an agreed disposition." In discussing defendant's sentencing, the record indicates the trial court was well aware that the sentencing range for the pellet gun case was 7 to 30 years, while for the firearm enhancement made the range 22 to 45 years in the other hijacking case. When the People stated, "No. It's 22, 7, and 3 then," the People were clearly referring to the minimum sentences applicable for the three crimes and not some sentencing bargain that had been made with defendant.

¶ 30 Accordingly, the trial court did not err in dismissing defendant's arguments based on alleged sentencing errors.

¶ 31 Defendant next argues that the trial court erred in dismissing his six ineffective assistance of counsel claims. Defendant contends that trial counsel was ineffective for failing to: (i) allege in the supplemental motion to suppress that defendant's statement was obtained after he requested counsel; (ii) object to incomplete discovery prior to allowing defendant to enter guilty pleas; (iii) properly calculate time served;² (iv) file a motion to withdraw guilty plea; (v) correct

² We have already dealt with this issue and ordered its correction. It does not represent ineffective assistance of counsel.

defendant's sentence on the on the non-firearm count of aggravated vehicular hijacking to exclude the 15-year firearm enhancement; and (vi) argue the constitutionality of the firearm enhancement.

¶ 32 It is well established that claims of ineffective assistance of counsel are reviewed under the two-prong test set forth in *Strickland v. Washington*, 466 U.S. 668 (1984). *People v. Evans*, 209 Ill. 2d 194, 219 (2004). The United States Supreme Court explained the test as follows:

A convicted defendant's claim that counsel's assistance was so defective as to require reversal of a conviction or death sentence has two components. First, the defendant must show that counsel's performance was deficient. This requires showing that counsel made errors so serious that counsel was not functioning as the "counsel" guaranteed the defendant by the Sixth Amendment. Second, the defendant must show that the deficient performance prejudiced the defense. This requires showing that counsel's errors were so serious as to deprive the defendant of a fair trial, a trial whose result is reliable. Unless a defendant makes both showings, it cannot be said that the conviction or death sentence resulted from a breakdown in the adversary process that renders the result unreliable.

Strickland v. Washington, 466 U.S. 668, 687 (1984). In order to prevail on such a claim, a defendant must satisfy both the performance and prejudice prongs of *Strickland*. *People v. Evans*, 209 Ill. 2d 194, 220 (2004). Judicial scrutiny of defense counsel's performance must be highly deferential. *Strickland*, 466 U.S. at 689.

¶ 33 First, defendant contends that his trial counsel was ineffective for failing "to preserve the issue of improper police questioning in the motion to suppress." Specifically, defendant claims that counsel should have argued that defendant "was represented by an attorney at the police station when [counsel] filed his supplemental motion to suppress." When a suspect requests counsel, all interrogation must cease and the accused may not be approached for further interrogation until counsel has been made available to him. *Edwards v. Arizona*, 451 U.S. 477 (1981). However, in order to be effective, the request for counsel must be clear and

unambiguous. *Davis v. United States*, 512 U.S. 452 (1994); *People v. Oaks*, 169 Ill. 2d 409 (1996).

¶ 34 In this case, the record does not support defendant's argument. In his first motion to suppress, defendant alleged "the statements sought to be suppressed were obtained as a result of interrogation that continued after the defendant had elected to consult with an attorney prior to further questioning." However, in a supplemental motion to suppress, defendant does not allege he invoked his right to counsel but rather invoked his right to remain silent. In an even later affidavit filed with his post-conviction petition, defendant does not allege he invoked his right to counsel or his right to remain silent. Instead, he alleges his attorney "came immediately to Dolton Police Station and spoke to me in the back room. On information and belief [my attorney] notified the police he was representing me and that any interrogations needed to be in his presence. Police officers read me my rights and tried to question me but I told them I knew nothing about two vehicular hijackings."

¶ 35 This also conflicts with the testimony given by the detectives, the state's attorney, and the defendant himself at the motion to suppress hearing. Defendant did not testify that he spoke with his attorney at the police station nor did he invoke his right to counsel, instead defendant testified he invoked his right to remain silent. The detectives testified that defendant was given *Miranda* warnings before each interview, and defendant signed a corresponding waiver each time. Neither the detectives' testimony nor the testimony of the ASA mentioned the presence of defendant's attorney at the police station. Defendant also signed *Miranda* waiver forms while in police custody. Accordingly, the record does not support defendant's claim that he invoked his right to counsel during the police questioning.

¶ 36 Next, defendant claims his trial counsel was ineffective for failing to obtain certain documents in discovery. Specifically, defendant alleges three items were not produced: (1) in case 08 C6 62121 three photo arrays shown to the victim on July 28, 2013; (2) in case 08 C6 62010, copies of the photographs of the incident which the reporting officer said in his report were in his possession; and (3) also in case 08 C6 62010, the video disc from the Illinois State Police that was sent to the Dolton Police Department covering the State's processing of the car and its evidence.

¶ 37 These allegations are based on defendant's post-conviction counsel's review of the record. Defendant has not attached the alleged officer's report or other evidence which supports his claim that items existed and were not produced. The record indicates that on April 15, 2010, trial counsel received various discovery items, such as a one-page sheet of *Miranda* rights, two pages of photographs, four pages of police reports, copy of a photo array, and five pages of additional photos. Moreover, on June 28, 2010, defense counsel received a supplemental report from one of the officers. The record demonstrates defendant's trial counsel took an active role in trying to obtain discovery. Defendant's claim is speculative at best. Moreover, defendant fails to demonstrate how not requesting these three items is an error so serious he was denied his Sixth Amendment right to counsel or was so deficient it prejudiced his defense. Accordingly, the trial court did not err in dismissing this claim.

¶ 38 Defendant's fourth claim of ineffective assistance deals with the alleged failure by trial counsel to withdraw his guilty plea. Defendant relies on his affidavit where he avers that on November 15, 2011 he informed his attorney to withdraw his guilty plea. However, as previously noted defendant was in court that day in order to allow for an amendment to his *mittimus*. The trial court again inquired of defendant whether he wished for his guilty plea to

stand and defendant unequivocally stated he wished to plead guilty. Later, when questioned by the court, defendant's trial counsel stated he was never asked to withdraw the guilty plea. Moreover, at the hearing on the motion, defendant admitted he remembered the court's admonishments regarding his need to timely file a motion to withdraw. Consequently, the record rebuts defendant's claim and the trial court did not err in dismissing it.

¶ 39 Defendant next contends that his trial counsel was ineffective because he failed to object to the 22 year sentence enhancement on the pellet gun/hijacking count. As previously discussed the trial court did not impose the 15 year firearm enhancement for the pellet gun case (08 C6 62121). The court was advised that the sentencing range for the pellet gun offense was 7 to 30 years imprisonment. The trial court sentenced defendant to 22 years imprisonment, which was within the allowable range. Based on this, the trial court did not err in dismissing this claim.

¶ 40 Defendant also contends that it was ineffective assistance of counsel for failing to question the constitutionality of the firearm enhancement. However, as explained earlier, the firearm enhancement was constitutionally applied. Accordingly, this cannot represent the basis for an ineffective assistance of counsel argument and was therefore properly dismissed by the trial court.

¶ 41 Lastly, defendant argues that the firearm enhancement does not apply to him, where he was not in possession of a firearm during the commission of the crime and where he was neither charged with nor found guilty under a theory of accountability. The People argue this issue is waived because defendant did not raise it in either his *pro se* post-conviction petition or his amended petition. The general rule is a party may not raise an issue for the first time on appeal. *People v. Jones*, 211 Ill. 2d 140, 148 (2004). Moreover, section 122-3 of the Post-Conviction Hearing Act provides "any claim of substantial denial of constitutional rights not raised in the

original or an amended petition is waived." 725 ILCS 5/122-3 (West 2012). We further find defendant has offered no reasonable excuse as to why we should reach the merits of this argument and not find it waived on appeal. The record indicates that defendant had ample time to prepare and brief this issue before the trial court and he did not. Accordingly, defendant has waived review of this issue and we will not consider it.

¶ 42

CONCLUSION

¶ 43 For the foregoing reasons, we correct defendant's *mittimus* to reflect 42 days of additional presentence credit, and we affirm the order of the trial court dismissing defendant's amended post-conviction petition.

¶ 44 Affirmed, *mittimus* corrected.