

**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).

2016 IL App (4th) 140602-U  
NO. 4-14-0602  
IN THE APPELLATE COURT  
OF ILLINOIS

FILED  
June 7, 2016  
Carla Bender  
4<sup>th</sup> District Appellate  
Court, IL

FOURTH DISTRICT

THE PEOPLE OF THE STATE OF ILLINOIS,	)	Appeal from
Plaintiff-Appellee,	)	Circuit Court of
v.	)	Champaign County
NICHOLAS JAMES,	)	No. 11CF1885
Defendant-Appellant.	)	
	)	Honorable
	)	Thomas J. Difanis,
	)	Judge Presiding.

PRESIDING JUSTICE KNECHT delivered the judgment of the court.  
Justices Turner and Appleton concurred in the judgment.

**ORDER**

¶ 1 *Held:* The appellate court affirmed the trial court's first-stage dismissal of defendant's postconviction petition, finding defendant's claims had no arguable basis in fact or law.

¶ 2 Defendant, Nicholas James, appeals the trial court's first-stage summary dismissal of his *pro se* postconviction petition arising from his conviction for residential burglary (720 ILCS 5/19-3(a) (West 2010)). He argues he presented the gist of a constitutional claim his trial counsel was ineffective for failing to inform him of mandatory Class X sentencing if convicted. We disagree and affirm.

¶ 3 I. BACKGROUND

¶ 4 On November 15, 2011, the State charged defendant with residential burglary (720 ILCS 5/19-3(a) (West 2010)). In April 2012, a jury found defendant guilty of the charged

offense. In May 2012, the trial court sentenced defendant to the maximum 30 years in prison. Defendant appealed and this court affirmed his conviction. *People v. James*, No. 4-12-0720 (Jan. 10, 2014) (unpublished order under Supreme Court Rule 23).

¶ 5 In June 2014, defendant *pro se* filed a postconviction petition. He asserted ineffective assistance of trial counsel, stating (1) his counsel failed to inform him of mandatory Class X sentencing if convicted; and (2) had he known, he likely would have accepted the State's offer of as low as 10 years' imprisonment and pleaded guilty. Later that same month, the trial court summarily dismissed defendant's petition, finding it frivolous and patently without merit.

¶ 6 This appeal followed.

¶ 7 II. ANALYSIS

¶ 8 Defendant argues the trial court erred in dismissing his postconviction petition at the first stage, arguing the petition stated the gist of a constitutional claim and warranted further consideration under the Post-Conviction Hearing Act (Act) (725 ILCS 5/122-1 to 122-7 (West 2014)). Defendant alleges ineffective assistance of counsel, as his attorney at trial did not inform defendant Class X sentencing was mandatory if convicted and, had he known, defendant would have accepted the State's offer of 10 years' imprisonment.

¶ 9 The 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." *People v. Tate*, 2012 IL 112214, ¶ 8, 980 N.E.2d 1100. At the first stage of postconviction proceedings, the trial court may summarily dismiss a petition upon a determination it is frivolous or patently without merit. *People v. Hodges*, 234 Ill. 2d 1, 10, 912 N.E.2d 1204, 1208-09 (2009) (citing 725 ILCS 5/122-2.1(a)(2) (West 2006)). A *pro se* petition for postconviction relief is frivolous or patently with-

out merit only when it "has no arguable basis either in law or in fact." *Hodges*, 234 Ill. 2d at 11-12, 912 N.E.2d at 1209. "A petition which lacks an arguable basis either in law or in fact is one which is based on an indisputably meritless legal theory or a fanciful factual allegation." *Hodges*, 234 Ill. 2d at 16, 912 N.E.2d at 1212. "The summary dismissal of a postconviction petition is reviewed *de novo*." *Tate*, 2012 IL 112214, ¶ 10, 980 N.E.2d 1100. In postconviction proceedings, "issues raised and decided on direct appeal are barred by *res judicata*, and issues that could have been raised but were not are forfeited." *Tate*, 2012 IL 112214, ¶ 8, 980 N.E.2d 1100.

¶ 10 Ineffective-assistance-of-counsel claims are guided by the standard set forth in *Strickland v. Washington*, 466 U.S. 668 (1984), which requires a defendant show both (1) counsel's performance "fell below an objective standard of reasonableness" and (2) the deficient performance prejudiced the defense. *Hodges*, 234 Ill. 2d at 17, 912 N.E.2d at 1212 (quoting *Strickland*, 466 U.S. at 687-88). "At the first stage of postconviction proceedings under the Act, a petition alleging ineffective assistance may not be summarily dismissed if (i) it is arguable that counsel's performance fell below an objective standard of reasonableness and (ii) it is arguable that the defendant was prejudiced." *Hodges*, 234 Ill. 2d at 17, 912 N.E.2d at 1212.

¶ 11 Even assuming defendant's factual assertions are true, defendant has not shown any possible prejudice resulting from the allegedly ineffective performance of his trial counsel. Defendant concedes in his brief he was informed at his arraignment he would be subject to mandatory Class X sentencing if convicted, which included admonishment of the minimum and maximum terms of imprisonment for which he would be eligible. Moreover, before empanelling the jury, the trial court confirmed defendant knew Class X sentencing was mandatory if convicted and he was voluntarily rejecting the State's offers of as little as 10 years' imprisonment. These facts contradict defendant's claim that he would have taken a plea deal had he been aware of the

mandatory Class X sentencing upon conviction.

¶ 12 We find defendant's assertion of ineffective assistance of counsel has no arguable basis in fact or law and, therefore, the trial court committed no error in summarily dismissing defendant's postconviction petition.

¶ 13 III. CONCLUSION

¶ 14 For the reasons stated, 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.

¶ 15 Affirmed.