

No. 1-15-1263

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).

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IN THE  
APPELLATE COURT OF ILLINOIS  
FIRST JUDICIAL DISTRICT

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|----------------------------------|---|-------------------|
| PEOPLE OF THE STATE OF ILLINOIS, | ) | Appeal from the   |
|                                  | ) | Circuit Court of  |
|                                  | ) | Cook County.      |
| Plaintiff-Appellee,              | ) |                   |
|                                  | ) |                   |
| v.                               | ) | No. 05 CR 3987    |
|                                  | ) |                   |
| WILLIE GLOVER,                   | ) |                   |
|                                  | ) |                   |
| Defendant-Appellant.             | ) | The Honorable     |
|                                  | ) | Nicholas R. Ford, |
|                                  | ) | Judge Presiding.  |

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JUSTICE LAVIN delivered the judgment of the court.  
Justices Pucinski and Cobbs concurred in the judgment.

ORDER

¶ 1 *Held:* This court affirmed the trial court's judgment denying defendant's postconviction petition following a third-stage evidentiary hearing. Defendant failed to establish his trial counsel was constitutionally ineffective.

¶ 2 Following a jury trial, defendant Willie Glover was found guilty of drug possession and drug delivery, then sentenced to concurrent terms of 18 years. Defendant filed a postconviction petition alleging ineffective assistance of trial counsel for failure to interview and present

exonerating witnesses. The matter eventually proceeded to a third-stage evidentiary hearing, after which the trial court denied defendant's petition for failure to establish by a preponderance of the evidence that he was entitled to relief for the alleged constitutional violation. Defendant now appeals contending the determination was against the manifest weight of the evidence and in error.

¶ 2

## BACKGROUND

¶ 2 Defendant was arrested and then charged with the above-stated drug offenses, and a related firearm charge, after police observed him participate three times in drug purchases along with two codefendants. The police search revealed that codefendant Raymond Harris, the seller, had \$160; defendant, the supplier, had four small foil packets of heroin plus \$27; and codefendant Raymond Hamilton, the buyer, had a small foil packet also with heroin. Defendant admitted selling drugs and having a gun nearby, which police recovered. The prosecution's case rested on police testimony.

¶ 2 The defense denied involvement in the drug buys, claiming defendant was in the wrong place at the wrong time, and attacked the veracity of the police officers. Defendant's friend Carl Longstreet, who suffers from multiple sclerosis and was in a wheelchair, testified that defendant was helping him retrieve a urine container from a car when police detained the two codefendants in Longstreet's yard. Police then wrongfully detained defendant who had no contraband because defendant was "mouthing off" to police. Longstreet's brother provided similar testimony. As stated, the jury found defendant guilty of the drug offenses, and he was sentenced to 18 years in prison. The jury nonetheless acquitted defendant on the related firearm charge.

¶ 2 Defendant filed a direct appeal, and this court affirmed his conviction. *People v. Glover*, No. 1-06-0677 (unpublished order under Rule 23). Defendant then filed a postconviction

petition supported by affidavits. He alleged, among other things, that his trial counsel was constitutionally ineffective for failing to investigate and call codefendants Harris and Hamilton, who would have disavowed defendant's participation in the drug deal. They disavowed defendant's participation after both pleaded guilty to drug charges related to the incident, and Harris at least had clearly implicated defendant in the facts underlying his guilty plea. This court vacated the trial court's dismissal of the petition, and remanded the case. *People v. Glover*, 2014 IL App (1st) 122847-U, ¶ 24. This court held that "While the transcripts of codefendants' guilty pleas presumably did not support this defense (as indicated in Harris's affidavit), it behooved trial counsel to go 'behind' and beyond those transcripts by seeking to interview codefendants, particularly after the State did not call either codefendant as a trial witness despite trial counsel's belief that it would." *Id.* ¶ 21. The matter then proceeded to a third-stage postconviction evidentiary hearing.

¶ 2 Trial counsel Christopher Anderson testified that he investigated the case and interviewed witnesses, took photos, obtained police reports and inventories, and also reviewed internal complaints against the officers, but Anderson did not talk to codefendants Hamilton or Harris. Rather, Anderson reviewed codefendants' guilty plea transcripts, and showed them to defendant, then relayed why codefendants would not be good witnesses. Harris had been sworn to his plea statements, wherein he implicated defendant. If Harris testified contrarily at defendant's trial, Harris' plea statement could be used as substantive evidence and a prior inconsistent statement to debunk defendant's case. Hamilton, on the other hand, was an admitted drug addict who had corroborated the State's case against defendant in his guilty plea. Calling him as a witness would have required a drug addict and accomplice instruction, depending on the testimony, and possibly injecting the State's Attorney in the case. In addition, in crediting codefendants'

disavowal, the defense would essentially be accusing the police of lying and "raising the stakes in the case." The State might have reacted by re-indicting defendant for the armed violence.<sup>1</sup> In short, Anderson believed interviewing the witnesses could be potentially damaging to defendant's case and any information gained therein could be used against defendant. He determined the best strategy and most ethical route was to preclude the codefendants from testifying and instead call the Longstreet brothers as independent witnesses.

¶ 2 In addition, Anderson observed defendant at arraignment apparently intimidating the codefendants and ordering them to disavow defendant's involvement in the drug buys. Defendant, for his own part, did not tell Anderson that his codefendants would be beneficial witnesses.

¶ 2 Codefendant Hamilton testified that he traveled about 40 minutes by bus to buy drugs from Harris, although he had never purchased narcotics from Harris before. He knew Harris' name was Maine, but did not know his real name. He hadn't been to that area in five or six years, but it was a drug corner. Hamilton also admitted he bought heroin on the day in question, but disavowed defendant's participation in the drug buys. Contrary to the police testimony, Hamilton claimed that when the police grabbed him, he did not have any narcotics. Rather, Hamilton testified that he swallowed six tinfoil packets of heroin to evade detection. He also assumed defendant lived at the house near where they were all arrested because defendant was getting something for his uncle. Following Hamilton's arrest and on the way to the police station, Hamilton voluntarily told authorities defendant had "nothing to do with it." Hamilton went to court for defendant's case and also told the State's Attorney that defendant "had nothing to do with it." Nonetheless, Hamilton did not tell his own public defender or defendant's that he

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<sup>1</sup> Defendant notes in his reply brief that vindictive prosecution is illegal. See *People v. Walker*, 84 Ill. 2d 512, 524 (1981).

wished to testify for defendant. But, had defendant's trial attorney contacted him, he would have testified as a witness. The factual basis for Hamilton's plea did not relate to defendant.

¶ 2 Defendant presented Harris' affidavit, in lieu of the live testimony. Harris averred that defendant (aka "Cornsilk") was not selling drugs with him on the day in question. Rather, defendant was walking across the street with "a coffee mug in one hand and a piss jug in the other." Harris did not see officers recover any drugs from defendant when they patted him down. After Harris' sentencing in the case, two State's Attorneys asked if he would implicate "Cornsilk," but Harris said defendant "was not a part of it and was not selling drugs" with him that day. Harris believed the police planted the drugs on defendant. Harris stated he just "went along with" the facts in his plea deal, but that defendant was innocent. If the defendant's defense members had spoken with him then, he would have relayed this information.

¶ 2 The trial court found, among other things, that Hamilton was not believable and that defendant was not prejudiced by the absence of his testimony. The court specifically stated, "I can't think of any rational litigator in this building with any amount of criminal practice [who] would have called Mr. Hamilton as a witness in this case." The court determined Hamilton was incredible because he was "a hard core drug addict" and due to his "general demeanor during the course of his testimony." The court found the following testimony by Hamilton was not believable -- that Hamilton consumed the drugs to evade recovery and that Hamilton somehow knew the address of defendant, a person he claimed not to know. The court also noted that Hamilton's testimony about where he lived at the time differed from the address he presented on the "I-Bond" when arrested, suggesting yet another lie. Given that both Harris and Hamilton were convicted felons, the court found it was quite reasonable not to put them before a jury. The

court in fact found defendant's case would have been damaged by putting Hamilton on the stand. This appeal followed.

¶ 2

#### ANALYSIS

¶ 2 The Post-Conviction Hearing Act provides a means for a criminal defendant to assert that, in the proceedings resulting in his conviction, there was a substantial denial of his constitutional rights. *People v. Evans*, 2013 IL 113471, ¶ 10. The Act provides for three stages of proceedings. *People v. Pendleton*, 223 Ill. 2d 458, 471-72 (2006). Generally, once a defendant establishes that his claims are not frivolous or patently without merit, the petition may reach the second stage of proceedings, wherein the defendant bears the burden of making a substantial showing of a constitutional violation. *Id.* at 472-73. In a third-stage postconviction hearing, the defendant must show a denial of a constitutional right by a preponderance of the evidence, and the circuit court must determine whether the evidence introduced demonstrates that the petitioner is, in fact, entitled to relief. *People v. Domagala*, 2013 IL 113688, ¶ 34; *People v. Whirl*, 2015 IL App (1st) 111483, ¶ 79. Following such a hearing, we will not reverse a trial court's denial of a postconviction petition unless its factual findings and credibility determinations are manifestly erroneous. *Pendleton*, 223 Ill. 2d 473; *Whirl*, 2015 IL App (1st) 111483, ¶ 76. A decision is manifestly erroneous when the opposite conclusion is clearly evident. *Whirl*, 2015 IL App (1st) 111483, ¶ 76.

¶ 2 On appeal, defendant contends the trial court's denial of his ineffective assistance of counsel claim was against the manifest weight of the evidence. A claim of ineffective assistance is subject to a two-prong test whereby the defendant must demonstrate that counsel's performance was deficient, or objectively unreasonable under prevailing professional norms, and that the deficient performance prejudiced the defendant in that there is a reasonable probability

the result of the proceeding would be different absent counsel's unprofessional errors.

*Domagala*, 2013 IL 113688, ¶ 36. A reasonable probability is a probability sufficient to undermine confidence in the outcome and defendant has the burden of demonstrating that, absent counsel's errors, the factfinder would have had a reasonable doubt respecting guilt. *People v. Morris*, 335 Ill. App. 3d 70, 78 (2002). We look to the totality of counsel's conduct. *People v. Ingram*, 382 Ill. App. 3d 997, 1006 (2008). Unless the defendant makes both showings, we cannot conclude that he received ineffective assistance. *People v. Graham*, 206 Ill. 2d 465, 476 (2003). That is, if an ineffective-assistance claim can be disposed of because the defendant suffered no prejudice, we need not determine whether counsel's performance was deficient. *Id.*

¶ 2 Defendant now argues he was entitled to postconviction relief because he proved by a preponderance of the evidence at the third-stage of proceedings that his attorney was ineffective for failing to investigate and call to the stand the codefendants as exonerating witnesses. We disagree.

¶ 2 Even assuming any deficiency on counsel's part, we conclude defendant has failed to establish he was prejudiced by counsel's decision not to interview and call codefendants as witnesses at trial. Here, defendant's postconviction petition ultimately turned on the credibility of Hamilton, the only codefendant to offer live testimony, and whether Hamilton's testimony was sufficiently corroborated by Harris' affidavit. As in every third-stage postconviction evidentiary hearing, it is within the trial court's province to assess the credibility of the witness after having observed the witness's demeanor at the hearing during both direct and cross-examination questioning, to decide the weight to give that testimony, and to resolve evidentiary conflicts. See *Domagala*, 2013 IL 113688, ¶ 34; *People v. Bracey*, 51 Ill. 2d 514, 517 (1972).

¶ 2 Based on our examination of the record, we cannot say that the trial judge's decision to reject Hamilton's testimony was against the manifest weight of the evidence. The testimony of an accomplice witness has inherent weaknesses, being testimony of a confessed criminal and fraught with dangers of motives such as malice toward the accused, fear, threats, promises or hopes of leniency, or benefits from the prosecution. *People v. Holmes*, 141 Ill. 2d 204, 242 (1990). The trial court found Hamilton incredible based on his general demeanor and status as an admitted drug addict. On this cold record, the opposite conclusion was not clearly apparent, especially given Hamilton's testimony that police did not find any narcotics whatsoever on him at the time (which was contrary to the police testimony), yet Hamilton did not claim the police planted on the drugs, or disavow his own guilty plea; that he swallowed six tinfoil heroin packets; that he traveled some 40 minutes to the drug corner for the first time in five or six years to buy drugs from Harris, someone he did not know, but whose nickname he did know; and the discrepancy between his addresses. The court's finding was also supported by Anderson's testimony that defendant apparently intimidated the two witnesses and thus coerced any possible exonerating testimony/evidence.

¶ 2 Given these factors, and the court's findings, it is clear the court believed calling Hamilton and Harris would have done more damage than not before the jury. As Anderson indicated, had Harris testified, it is highly likely the State would have presented as substantive evidence his plea transcript, wherein he implicated defendant. That, together with Hamilton's incredible testimony and their felon pasts, would have detracted from the rather clean and simple testimony of the Longstreets, two independent witnesses, who denied defendant's involvement in the drug buys. As the court stated, Hamilton's<sup>2</sup> "stench of \*\*\* implausibility would have been on [defendant] as opposed to the Longstreet's [sic] who had nothing to do with this."

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<sup>2</sup> The court actually referenced Harris here, but it's clear from context that it meant Hamilton.



Likewise, the court found Hamilton's testimony merely emphasized that this was a known drug corner, as opposed to a drug transaction in which defendant mistakenly became embroiled. The trial court therefore determined counsel's decision not to call these witnesses did not prejudice defendant or undermine confidence in the trial result. In other words, defendant failed to prove that it was more probably true than not that there was a reasonable probability the outcome of his trial would have been different had Hamilton and Harris been called as defense witnesses. See *People v. Coan*, 2016 IL App (2d) 151036, ¶ 28 (a proposition proved by a preponderance of the evidence is one that has been found to be more probably true than not true)

¶ 2 In reaching this conclusion, we reject defendant's contention that the trial court did not understand the *Strickland* prejudice requirement simply because the court stated "[t]he idea that Mr. Hamilton's testimony would have changed the outcome \*\*\* is just baseless," as opposed to more deftly stating there was *no reasonable probability* the result would have been different absent the alleged deficiency. We presume the trial court knows the law and applies it correctly. *People v. Chatman*, 2016 IL App (1st) 152395, ¶ 65. The court's findings and language throughout were rather strongly expressed. It's possible the court cited that standard as a hyperbolic means of emphasizing its conclusion that if there was no possible prejudice, there could be no reasonable probability that the result could have changed absent the deficiency. This is what we take the language to mean. For the same reason, we also take issue with defendant's baseless claim that the trial court had not considered the lower court record or made a reasoned and careful decision on the evidence at the postconviction hearing. The trial court stated it recalled Anderson's testimony and considered that of Hamilton, in addition to Harris' affidavit. The court also referenced the Longstreets as the defense witnesses from the first trial, thus indicating its familiarity with the case.

¶ 2 Defendant also claims the court further erroneously discredited Hamilton by noting the discrepancy between the address Hamilton testified to when this incident occurred and the one he reported via his I-Bond when he was actually arrested. Defendant in his reply brief does not dispute the State's contention that this is a public record of which courts may take judicial notice. See *People v. Hill*, 2014 IL App (3d) 120472, ¶ 18. Rather, defendant argues the trial court made an impermissible inference that Hamilton was lying due to the discrepancy, while Hamilton was not directly able to address the matter on the stand. We conclude it was not beyond the bounds of the defense to correct this at the hearing if there were anything to correct, and the court's notation of such a discrepancy in the court file was permissible. Regardless, even if there was error in the inference drawn from this evidence, it was clearly not the only or primary reason the court found Hamilton unbelievable and, as such, was harmless.

¶ 2 CONCLUSION

¶ 2 The trial court's judgment was not against the manifest weight of the evidence. We affirm the denial of postconviction relief to defendant following the third-stage evidentiary hearing.

¶ 2 Affirmed.