

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).

FILED

November 15, 2017
Carla Bender
4th District Appellate
Court, IL

2017 IL App (4th) 160923-U

NO. 4-16-0923

IN THE APPELLATE COURT

OF ILLINOIS

FOURTH DISTRICT

THE PEOPLE OF THE STATE OF ILLINOIS,)	Appeal from
Plaintiff-Appellee,)	Circuit Court of
v.)	Sangamon County
JAMES WILLIAMS, JR.,)	No. 4CF760
Defendant-Appellant.)	
)	Honorable
)	John M. Madonia,
)	Judge Presiding.

JUSTICE STEIGMANN delivered the judgment of the court.
Presiding Justice Turner and Justice Appleton concurred in the judgment.

ORDER

- ¶ 1 *Held:* The appellate court affirmed the trial court’s judgment, denying defendant’s petition for postconviction relief after a third-stage evidentiary hearing.
- ¶ 2 In July 2005, a jury convicted defendant, James Williams, Jr., of attempt (first degree murder), attempt (armed robbery), and unlawful use of a weapon by a felon. The trial court sentenced him to consecutive sentences of 30 and 15 years in prison, respectively, for attempt (first degree murder) and attempt (armed robbery).
- ¶ 3 Defendant later filed a motion to reconsider his sentence, alleging that the trial court imposed its sentence for attempt (first degree murder) under the mistaken impression that defendant would be required to serve at least 50% of that sentence, when the law required defendant to serve at least 85%. The court denied the motion. The court acknowledged that it imposed the sentence for attempt (first degree murder) under the mistaken belief that defendant could serve merely 50% of the sentence. The court explained that no matter whether defendant

was required to serve 50% or 85% of his sentence, the court believed that defendant should receive the maximum sentence of 30 years in prison for attempt (first degree murder). We affirmed defendant's convictions on direct appeal. *People v. Williams*, No. 4-05-0997 (Apr. 13, 2007) (unpublished order under Supreme Court Rule 23).

¶ 4 In July 2008, defendant *pro se* filed a petition for postconviction relief, claiming that he received ineffective assistance of counsel during plea negotiations. Specifically, defendant argued that trial counsel failed to advise him that (1) the trial court could impose consecutive sentences and (2) he would be required to serve at least 85% of any sentence on attempt (first degree murder). Defendant argued that had counsel properly advised him, defendant would have accepted the State's guilty-plea offer, which included a sentence of 18 years in prison. The court appointed counsel, who filed an amended petition. The State filed a motion to dismiss the amended petition, which the court granted. On appeal, we reversed and remanded for a third-stage evidentiary hearing. *People v. Williams*, 2016 IL App (4th) 140502, 54 N.E.3d 934.

¶ 5 In December 2016, the trial court on remand conducted an evidentiary hearing, after which it denied defendant's petition for postconviction relief.

¶ 6 Defendant appeals, arguing that the trial court erred by denying his claim that counsel provided ineffective assistance during plea negotiations. We disagree and affirm.

¶ 7 I. BACKGROUND

¶ 8 A. Defendant's Convictions and Direct Appeal

¶ 9 1. *Defendant's Trial and Sentencing*

¶ 10 In July 2005, a jury convicted defendant of attempt (first degree murder) (720 ILCS 5/8-4, 9-1(a)(1) (West 2004)); attempt (armed robbery) (720 ILCS 5/8-4(a), 18-2(a)(2) (West 2004)); and unlawful use of a weapon by a felon (720 ILCS 5/24-1.1(a) (West 2004)).

¶ 11 At the November 2005 sentencing hearing, the State urged the trial court to impose discretionary consecutive sentences on the two attempt convictions. The State argued that discretionary consecutive sentences were necessary to protect the public, as authorized by section 5-8-4(b) of the Unified Code of Corrections (Code) (730 ILCS 5/5-8-4(b) (West 2004)). In addition, the State argued that attempt (first degree murder) was a Class X felony, for which the court could sentence defendant to an extended-term sentence of up to 60 years in prison under section 5-8-2 of the Code (730 ILCS 5/5-8-2 (West 2004)). The State argued that attempt (armed robbery) was a Class 1 felony, for which the court could impose an extended-term sentence of up to 30 years, resulting in an aggregate maximum sentence of 90 years on the two attempt convictions. The State agreed with the court that “[t]his is not a truth-in-sentencing case,” so defendant could receive “day-for-day” credit while serving his sentences. Defense counsel did not object.

¶ 12 The trial court found that discretionary consecutive sentences on the attempt convictions were necessary to protect the public. The court sentenced defendant to consecutive, non-extended-term, sentences of 30 years for attempt (first degree murder) and 15 years for attempt (armed robbery). In addition, the court imposed a 5-year sentence for unlawful use of a weapon by a felon, to be served concurrently with his attempt sentences.

¶ 13 *2. Defendant’s Motion To Reconsider Sentence*

¶ 14 Later in November 2005, defendant—through counsel—filed a motion to reconsider sentence. Defendant argued that the trial court sentenced defendant under a mistaken impression that defendant would receive day-for-day sentencing credit toward his sentence for attempt (first degree murder), when, in actuality, section 3-6-3(a)(2)(ii) of the Code (730 ILCS 5/3-6-3(a)(2)(ii) (West 2004)) required defendant to serve at least 85% of that sentence.

¶ 15 *3. The Hearing on the Motion To Reconsider*

¶ 16 In November 2005, the trial court conducted a hearing on defendant’s motion to reconsider his sentence. At the hearing, the State explained that at the sentencing hearing, the parties and the court were operating under the mistaken impression that defendant would need to serve a minimum of 50% of his sentence for attempt (first degree murder), when the law actually required him to serve at least 85%. The State noticed the mistake shortly after the sentencing hearing and informed trial counsel, who then included the issue in his motion to reconsider sentence. Despite the mistake, the State urged the court to maintain its sentence of 30 years on attempt (first degree murder). The trial court denied the motion to reconsider, explaining that defendant should receive the maximum sentence for attempt (first degree murder).

¶ 17 *4. Defendant’s Pro Se Motions To Reconsider Sentence*

¶ 18 In December 2005, defendant *pro se* filed two motions, raising various issues concerning his trial and sentences. In pertinent part, defendant alleged that before trial, the State had offered him a guilty-plea agreement that included a sentence of 18 years in prison. Defendant stated that he decided to reject that offer and go to trial because “I wasn’t guilty of the crimes charged.” In addition, defendant alleged that the trial court imposed consecutive sentences to punish defendant for proceeding to trial. Defendant argued further that he did not meet the criteria necessary for the court to impose discretionary consecutive sentences. (No ruling on defendant’s *pro se* motions appears in the record.)

¶ 19 *5. Direct Appeal*

¶ 20 Defendant appealed his convictions, arguing that trial counsel was ineffective for failing to file a motion to sever the charge of unlawful use of a weapon. We affirmed defendant’s convictions. *Williams*, No. 4-05-0997 (Apr. 13, 2007) (unpublished order under Supreme Court Rule 23).

¶ 21 B. Defendant's Petition for Postconviction Relief

¶ 22 1. *The Second-Stage Denial of Defendant's Petition and Subsequent Appeal*

¶ 23 In July 2008, defendant *pro se* filed a petition for postconviction relief under the Post-Conviction Hearing Act (Act) (725 ILCS 5/122-1 to 122-7 (West 2008)). In pertinent part, defendant argued that he was denied the effective assistance of trial counsel during plea negotiations. Defendant averred that the State had offered him a guilty-plea agreement, including a sentence of 18 years, of which he would be required to serve at least 85%. Defendant claimed that, when advising him of the penalties he faced at trial, trial counsel (1) failed to advise him that he faced the possibility of consecutive sentences on the attempt counts and (2) erroneously advised him that he would serve 50% of any sentence on attempt (first degree murder) instead of 85%. Defendant contended that if counsel had properly advised him of the sentencing penalties he faced if found guilty at trial, defendant would have accepted the State's guilty-plea offer. The trial court appointed counsel, who filed an amended petition in October 2012.

¶ 24 In May 2014, the trial court granted the State's motion to dismiss defendant's amended petition. Defendant appealed, and this court reversed the trial court's judgment and remanded the case for a third-stage evidentiary hearing on defendant's amended postconviction petition. *Williams*, 2016 IL App (4th) 140502, ¶46, 54 N.E.3d at 944.

¶ 25 2. *The Proceedings on Remand*

¶ 26 On remand in December 2016, the trial court conducted an evidentiary hearing on defendant's amended petition for postconviction relief. Matthew Maurer testified that he represented defendant in this case during plea negotiations, trial, sentencing, and posttrial motions. Maurer had practiced criminal law from 1987 until 2010, when he was appointed as an associate judge in Sangamon County. He conducted approximately 150 jury trials as a practicing attorney.

¶ 27 Maurer testified further that he did not remember the specifics of defendant's case. Generally, when Maurer represented a criminal defendant, he would review the charges, determine the possible sentencing penalties, and then inform his client of those possible penalties to determine how to proceed. Maurer testified that, "I would always advise individuals that it was always the possibility of discretionary consecutive sentences depending on the facts and circumstances of their case because there was always a possibility." Maurer was "confident" that he advised defendant in this case that discretionary consecutive sentencing was a possibility. On cross-examination, Maurer testified that based on the facts of this case, he probably advised defendant to accept the State's guilty-plea offer.

¶ 28 Defendant testified that Maurer met with him before trial to discuss the possible penalties he faced if he chose to go to trial. Maurer told defendant that he faced maximum sentences of 30 years in prison for attempt (first degree murder), 15 years for attempt (armed robbery), and 5 years for unlawful possession of weapons by a felon. Defendant testified that Maurer never discussed with him the possibility of consecutive sentences or that he would serve at least 85% of any sentence on attempt (first degree murder). Maurer informed defendant that the State had made an offer, under which defendant would plead guilty and receive a sentence of 18 years in prison, of which he would serve at least 85%. Maurer did not tell defendant which charge he would plead guilty to under that agreement. Maurer advised defendant to accept the State's offer, while stating that the decision was ultimately defendant's to make. Defendant testified that he rejected the offer because "I didn't think that I could be found guilty." Defendant testified further that if his convictions were vacated, and the State again offered a plea agreement for 18 years in prison at 85%, defendant would accept that offer.

¶ 29 On cross-examination, defendant acknowledged that neither of his *pro se* post-

sentencing motions included the allegation that Maurer failed to advise him about the possible sentencing penalties. Defendant explained that he was not a lawyer and did not know which arguments were important enough to include in his motions.

¶ 30 At the conclusion of the hearing, the trial court made an oral ruling denying defendant's amended petition for postconviction relief. The court found that defendant's testimony was not credible. Specifically, the court found not credible defendant's assertions that he was unaware that (1) the trial court could impose consecutive sentences and (2) he would be required to serve at least 85% of his sentence for attempt (first degree murder). In support of those findings, the court reasoned that had defendant actually been unaware that he could be sentenced to more than an aggregate of 30 years in prison, defendant surely would have raised that issue in his *pro se* postsentencing motions, after being sentenced to an aggregate of 45 years in prison.

¶ 31 Based on its findings, the trial court determined that defendant had established neither that counsel provided deficient representation nor that defendant suffered prejudice. As to counsel's performance, the court found that counsel had properly advised defendant that consecutive sentences were a possibility and that defendant would be required to serve at least 85% of the sentence he received. The court noted that after the court erroneously sentenced defendant to an aggregate sentence of 45 years in prison to be served at 50%, Maurer filed a motion alerting the court that defendant was required to serve 85% and asking the court to therefore reduce the term of years. The court concluded that Maurer's filing showed that Maurer knew the correct sentencing rules—knowledge that the court found Maurer communicated to defendant during plea negotiations.

¶ 32 As to prejudice, the trial court found that, even assuming that counsel had misadvised defendant, defendant's reason for rejecting the plea agreement was that he thought he had a

viable defense at trial. Therefore, the court concluded, any erroneous advice by counsel would not have affected defendant's decision to reject the guilty-plea offer—defendant was going to trial regardless of the sentencing penalties he faced. The court described defendant's allegations as “buyer's remorse.”

¶ 33 The trial court concluded that defendant failed to meet his burden to establish either prong of his ineffective assistance of counsel claim. The court therefore denied his petition for postconviction relief.

¶ 34 This appeal followed.

¶ 35 II. ANALYSIS

¶ 36 Defendant argues that the trial court erred by denying his petition for postconviction relief. Specifically, defendant argues that the evidence presented at the hearing on his petition established that trial counsel was ineffective for failing to properly advise him during plea negotiations of the potential sentencing penalties he faced at trial. We disagree and affirm the trial court's judgment.

¶ 37 A. Statutory Language and the Standard of Review

¶ 38 The Act (725 ILCS 5/122-1 to 122-7 (West 2008)) provides a remedy for defendants whose convictions resulted from substantial violations of their constitutional rights. *People v. Edwards*, 197 Ill. 2d 239, 243-44, 757 N.E.2d 442, 445 (2001). The Act sets up a three-stage process for adjudicating postconviction petitions. *People v. Bocclair*, 202 Ill. 2d 89, 99, 789 N.E.2d 734, 740 (2002). At the first stage, the trial court shall dismiss the petition if it is "frivolous or is patently without merit." 725 ILCS 5/122-2.1(a)(2) (West 2008). Otherwise, the court appoints counsel, who makes any necessary amendments to the petition. The petition then proceeds to the second stage, where the petition must establish a “substantial showing of a constitu-

tional violation.” (Internal quotation marks omitted.) *People v. Tate*, 2012 IL 112214, ¶ 10, 980 N.E.2d 1100. If the petition fails to make a substantial showing, the court should dismiss it. *Id.* Otherwise, the petition proceeds to the third stage for an evidentiary hearing. *Id.*

¶ 39 At the third stage, the defendant bears the burden of making a substantial showing of a constitutional violation. *People v. Pendleton*, 223 Ill. 2d 458, 473, 861 N.E.2d 999, 1008 (2006). After a third-stage evidentiary hearing, if the trial court’s decision involved fact-finding and credibility determinations, we will not reverse the trial court’s decision on a postconviction petition unless that decision was manifestly erroneous. *People v. Crenshaw*, 2012 IL App (4th) 110202, ¶ 12, 974 N.E.2d 1002. A decision is manifestly erroneous only if the error was “ ‘clearly evident, plain, and indisputable.’ ” *Id.* (quoting *People v. Morgan*, 212 Ill. 2d 148, 155, 817 N.E.2d 524, 528 (2004)).

¶ 40 B. Ineffective Assistance of Counsel in Plea Negotiations

¶ 41 The Illinois and United States constitutions guarantee criminal defendants the right to effective assistance of counsel. Ill. Const., art. I, § 8; U.S. Const. amends. VI, XIV. To establish a claim of ineffective assistance of counsel, a defendant must show both that (1) counsel’s performance was objectively unreasonable under prevailing professional norms and (2) defendant suffered prejudice—that is, there is a reasonable probability that the result of the proceedings would have been different had counsel performed reasonably. *Strickland v. Washington*, 466 U.S. 668, 687-94 (1984).

¶ 42 The right to effective assistance of counsel applies to the plea bargaining process. *Lafler v. Cooper*, 566 U.S. 156, 162 (2012); *People v. Hale*, 2013 IL 113140, ¶ 15, 996 N.E.2d 607. “A criminal defendant has the constitutional right to be *reasonably* informed with respect to the direct consequences of accepting or rejecting a plea offer.” (Emphasis in original.) *People v.*

Curry, 178 Ill. 2d 509, 528, 687 N.E.2d 877, 887 (1997).

¶ 43 To establish prejudice in the context of a defendant’s decision to reject a guilty-plea offer, the defendant must show “a reasonable probability that, absent his attorney’s deficient advice, he would have accepted the plea offer.” *People v. Hale*, 2013 IL 113140, ¶ 18, 996 N.E.2d 607. Defendant’s showing of prejudice must include more than his own “subjective, self-serving” testimony. (Internal quotation marks omitted.) *Id.* To establish prejudice, a defendant must provide “ ‘independent, objective confirmation that defendant’s rejection of the proffered plea was based upon counsel’s erroneous advice,’ and not on other considerations.” *Id.* (quoting *Curry*, 178 Ill. 2d at 532, 687 N.E.2d at 888). “The disparity between the sentence a defendant faced and a significantly shorter plea offer can be considered supportive of a defendant’s claim of prejudice.” *Id.*

¶ 44 C. The Trial Court’s Decision in This Case

¶ 45 In this case, the trial court determined that defendant failed to establish either prong of the *Strickland* test. We conclude that the court’s decision was not manifestly erroneous.

¶ 46 1. *Counsel’s Performance*

¶ 47 The trial court found that Maurer properly advised defendant about the possible sentencing penalties were defendant to go to trial. The court found credible Maurer’s testimony that, although he could not remember what specific advice he gave defendant in this case, Maurer routinely advised criminal defendants about the applicable sentencing ranges, including the court’s authority to impose discretionary consecutive sentences. In addition, the court found not credible defendant’s testimony that he was unaware that the court could impose consecutive sentences and that he would have to serve 85% of his sentence for attempt (first degree murder).

¶ 48 In support of that finding, the court reasoned that had defendant actually thought

that the maximum available sentence was 30 years at 50%, defendant would have alleged as much in his *pro se* postsentencing motions. A reviewing court will not substitute its judgment for that of the trier of fact on issues involving the credibility of witnesses. *People v. Brown*, 2013 IL 114196, ¶ 48, 1 N.E.3d 888.

¶ 49 We acknowledge that the trial court’s finding that Maurer informed defendant that he would be required to serve 85% of any sentence he received for attempt (first degree murder) might appear inconsistent with Maurer’s conduct at the events of the November 2005 sentencing hearing. At that hearing, the State informed the trial court that defendant would be required to serve a minimum of 50% of his sentence for attempt (first degree murder) instead of 85%. Maurer did not object or otherwise contest the State’s assertion on that point. Based on the record, both parties and the court may have been operating under the erroneous assumption that defendant was required to serve only 50% of his sentence for attempt (first degree murder). The trial judge here noted that Maurer filed a motion alerting the court that defendant was required to serve 85% and asking the court to reduce the term of years.

¶ 50 However, we need not address further the issue of whether counsel properly advised defendant as to the possible sentencing penalties because, even if counsel’s performance was objectively unreasonable, defendant has not established that he suffered prejudice as a result.

¶ 51 *2. Prejudice*

¶ 52 The trial court found that, even assuming, *arguendo*, defendant was misadvised by Maurer, defendant has not established that such allegedly deficient advice resulted in prejudice. Again, to establish prejudice in this context, defendant must show “a reasonable probability that, absent his attorney’s deficient advice, he would have accepted the plea offer.” *Hale*, 2013 IL 113140, ¶ 18, 996 N.E.2d 607.

¶ 53 Defendant stated in his postconviction petition and at the hearing on that petition that he rejected the State's offered plea agreement because he thought he could prevail at trial. Therefore, it appears that counsel's allegedly erroneous advice was not what led defendant to reject the State's offered plea agreement. By defendant's own admission, he rejected the plea offer because he believed he would be found not guilty. The trial court therefore found that defendant would have proceeded to trial absent Maurer's allegedly erroneous advice. That determination by the trial court was not manifestly erroneous.

¶ 54 The trial court's decision to deny defendant's petition for postconviction relief was not manifestly erroneous.

¶ 55 III. CONCLUSION

¶ 56 For the foregoing reasons, we affirm the trial court's judgment.

¶ 57 As part of our judgment, we award the State its \$50 statutory assessment against defendant as costs of this appeal. 55 ILCS 5/4-2002(a) (West 2016).

¶ 58 Affirmed.