2018 IL App (1st) 160580-U

No. 1-16-0580

Order filed May 14, 2018

FIRST DIVISION

IN THE

APPELLATE COURT OF ILLINOIS

FIRST DISTRICT

THE PEOPLE OF THE STATE OF ILLINOIS,	)	Appeal from the
	)	Circuit Court of
Plaintiff-Appellee,	)	Cook County.
	)	
v.	)	No. 07 CR 20512
	)	
WILLIAM CHABAN,	)	Honorable
	)	Neera Walsh,
Defendant-Appellant.	)	Judge, presiding.

JUSTICE HARRIS delivered the judgment of the court.
Presiding Justice Pierce and Justice Mikva concurred in the judgment.

ORDER

¶ 1 *Held*: Where the factual allegation underlying defendant's *pro se* postconviction petition's claim of ineffective assistance of trial counsel is contradicted by the record, and where the petition did not establish arguable prejudice resulting from counsel's alleged ineffectiveness, the trial court did not err in summarily dismissing the petition. Defendant may not raise a claim for presentencing custody credit for the first time on appeal from the dismissal of a postconviction petition.

¶ 2 Defendant William Chaban appeals from the trial court's summary dismissal of his *pro se* petition for relief pursuant to the Post-Conviction Hearing Act. 725 ILCS 5/122-1 *et seq.* (West 2014). On appeal, defendant contends that summary dismissal was improper because he raised an arguable claim that trial counsel was ineffective for failing to advise the trial court that defendant was unable to understand the court or the witnesses at his jury trial due to his hearing impairment. Defendant further contends that he is entitled to three additional days of presentencing custody credit. For the reasons that follow, we affirm.

¶ 3 Defendant's conviction arose from the June 2007 strangulation death of his mother-in-law. Following a jury trial that took place on June 28 and 29, 2011, defendant was found guilty of first degree murder and sentenced to 45 years in prison. On direct appeal, this court affirmed defendant's conviction and sentence. *People v. Chaban*, 2013 IL App (1st) 112588-U. In our order, we set forth the underlying facts of the case in detail. Given the nature of defendant's current claim, we need not repeat those facts here. Instead, we restrict our recitation of facts to those relevant to defendant's claim on appeal that his hearing impairment caused him to be unable to understand the court and the witnesses at trial.

¶ 4 Following jury selection but prior to opening statements, defendant's attorneys alerted the trial court that defendant was using a device to enhance his hearing. Specifically, defendant's attorneys, the prosecutors, and the trial court discussed the device outside the presence of the jury as follows:

> "[DEFENSE COUNSEL]: Judge, the defendant has a device in his ear to hear better.
>
> THE COURT: Yes.

[DEFENSE COUNSEL]: I don't know if you need to address that with the jury or not.

THE COURT: I don't think so. It's just an accommodation that we would give to anybody else.

[DEFENSE COUNSEL]: Well, it also [looks] like one of those phones that - -

THE COURT: Okay.

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THE COURT: And you had brought to the court's attention that [defendant] is wearing a device to enhance his hearing; is that correct?

[DEFENSE COUNSEL]: Yes, your Honor.

[DEFENSE COUNSEL]: Yes, ma'am.

THE COURT: All right. And are you asking me to do anything?

[DEFENSE COUNSEL]: I would like you to address the jury, just so they don't think it's a cell phone that he's wearing.

THE COURT: Okay. All right. And, State, do you have any objection to that?

[ASSISTANT STATE'S ATTORNEY]: No, Judge.

[ASSISTANT STATE'S ATTORNEY]: No, Judge.

THE COURT: Okay. I don't have a problem telling them that. But just so we are clear, it isn't a cell phone.

[DEFENSE COUNSEL]: It's not.

THE COURT: It's just a hearing device.

[DEFENSE COUNSEL]: It's a hearing device.

THE COURT: And for those of you who are in the courtroom, if you do have cell phones, you need to turn them off. Not on silent or vibrate, they need to be off. Okay."

¶ 5 Once the jurors were seated in the courtroom, the trial court informed them about defendant's hearing device as follows:

"THE COURT: [W]e will be taking breaks during the day, too, so we will make accommodations for people who have some special needs. One of those accommodations we're going to be making is that the defendant, as you see him seated right there, has a device that's in his ear. I wanted to make sure you understand it's not a cell phone, it's so that he can hear better. So he is being allowed to use that at this time."

¶ 6 After the State rested and the trial court denied defendant's motion for a directed verdict, the trial court spoke with defendant outside the jury's presence. The court advised defendant that he had a fundamental right to testify and that while his attorneys could advise him on the topic, it was his decision whether to exercise or waive that right. The court, defendant, and defendant's attorneys then engaged in the following exchange:

"THE COURT: Did you have an opportunity to talk to your attorneys? You have to speak up louder because I need the court reporter to be able - -

THE DEFENDANT: Sorry. Yes, I did.

THE COURT: After talking to your attorneys, what did you decide? Do you wish to testify?

THE DEFENDANT: I decided I am not going to testify.

THE COURT: You are not planning on calling any witnesses. Is that correct?

[DEFENSE COUNSEL]: That's correct.

[DEFENSE COUNSEL]: That is correct.

THE COURT: So you understand that your attorneys are not going to be calling any witnesses on your behalf. Do you understand that?

THE DEFENDANT: I understand that.

THE COURT: You agree with them for trial strategy purposes that's what you want to do?

THE DEFENDANT: Yes.

THE COURT: All right. That's fine."

¶ 7 Defendant rested, the parties presented closing arguments, and the jury was instructed. The jury thereafter found defendant guilty of first degree murder. Defendant filed a posttrial motion, which the trial court denied.

¶ 8 At sentencing, which took place about five weeks later on August 3, 2011, the trial court indicated it was in possession of defendant's presentence investigation report (PSI). In the section of the PSI outlining defendant's health condition, the probation officer noted that defendant "explained that he has a difficult time hearing." The court heard aggravation and

mitigation from the attorneys, and then invited defendant to speak. Defendant addressed the trial court as follows:

"[DEFENDANT]: Thank you. Just a few things I would like to say.

THE COURT: Take your time.

[DEFENDANT]: First I wanted to thank you off the record for giving me the chair. I'm at a loss for words.

THE COURT: You sure you don't want to sit?

[DEFENDANT]: Your Honor, the two years that you've been my judge, I believe, we've never had no problems, I've done everything you've ever asked me to. I tried to appeal with everything the court ever asked me to do on a need basis even if I didn't agree.

As my lawyer was saying, I have cancer, it's chronic leukemia, I have a heart condition. I'm not getting all my medications. The reason I am walking in here the way I am now they're looking at my spine as a deterioration. They think I might be paralyzed within a few months, they're not sure anymore. I know I'm probably not supposed to be asking for bond or for asking or what I'm doing. I'm asking if they would revoke the bond back to what it was if my family can help me get out and get medical attention.

I just want a chance to prove this the right way and be able to withstand next to being here. I have never done anything that's proved you wrong, that I would try to take off or give you a different judgment of me. You were here when I fell off my truck, I couldn't move my leg. I didn't even go to the hospital

because my court date was the next day and I wanted to make sure I came here first and I went to the hospital afterwards, got yelled out by my own doctors but I wanted to be here for yours first, not have to tell [defense counsel] that I didn't show up or you, Your Honor.

You've been pretty fair with me. Yes, there's things we've never perfectly agreed on everything I'm sure, but I've never done anything to try to upset you purposefully or tried to make it seem like I'm running. I need medical attention constantly. My leukemia has to be monitored. Like every month they're supposed to do blood work. They change my medicine all the time. I skipped so many days they don't even know where my white count is anymore, they won't check it, I've asked a few times already.

I just want a chance to be able to fight any of this and the condition I'm going in now I've already lost - - before the court date last time the last doctor's appointment I had was on the 25th, that was 35 pounds lost weight at that point since I've been in here. They've said nothing of that even. All my medication, they just keep changing things and they don't even know really what my conditions are versus my doctor that I've had for years, I trust her opinion then changing, these doctors just want to keep changing things and tell me to take the medicine. I don't even know the medicine they're giving me anymore.

I'm just asking if there is any way I can get my bond reinstated I would work with you however you want to do. I'm just asking for a chance basically.

> I'm sorry I'm not able to talk as much as I should be able to here, but I thank Your Honor for giving me the moment. I'm sorry."

¶ 9 The trial court indicated that it had considered the PSI, the attorneys' arguments, the relevant statutory factors, and the evidence presented at trial. It then imposed a sentence of 45 years in prison. While the attorneys calculated defendant's presentence custody credit, the trial court admonished defendant regarding his right to appeal. During the admonishments, the trial court asked defendant three times whether he understood. All three times, defendant responded, "Yes." After the trial court denied defendant's postsentencing motion, defense counsel reported that defendant was in presentence custody for 59 days. As such, the trial court stated that defendant would be credited with that amount. The mittimus reflects a presentence custody credit of 59 days.

¶ 10 Defendant appealed, contending that (1) the trial court erred in admitting the opinion of a lay witness on his guilt or innocence; (2) the trial court erred in denying his motion *in limine* to bar evidence of his alleged consciousness of guilt; (3) in closing argument, the prosecutor made several misstatements of fact not based on the evidence, which denied him a fair trial; and (4) the State did not prove him guilty beyond a reasonable doubt. We affirmed defendant's conviction and sentence. *People v. Chaban*, 2013 IL App (1st) 112588.

¶ 11 On November 18, 2015, defendant filed the *pro se* postconviction petition at issue in the instant appeal, making a series of allegations that his constitutional rights had been violated. As relevant here, under the heading "Counsel Failed to Seek DNA Expert or Other Assistance," defendant alleged as follows:

> "Defendant informed counsel he could not hear what the court or witnesses was saying in his criminal trial, even though defendant was admonished by the court. ([Record citation]); (see Ex. 5, audiogram of severe loss of hearing in both ears, dated February 4, 2014)."

Defendant attached to his petition a report indicating that an audiogram had been conducted on February 4, 2014. In the report, the audiologist made the following findings: "Moderate to severe hearing loss in both ears – without amplification, he will NOT function in a normal hearing world." (Emphasis in original.) The audiologist's assessment was "suggest a hearing aid for right ear," and her recommendations / plans were "aid for right ear – he will then have a much better chance of functioning in the world."

¶ 12 The trial court summarily dismissed the petition as frivolous and patently without merit. Defendant appealed.

¶ 13 On appeal, defendant contends that summary dismissal was improper because he raised an arguable claim that trial counsel was ineffective for failing to advise the trial court that he was unable to understand the court or the witnesses at trial due to his hearing impairment. He argues that after he told counsel he could not hear the court or the witnesses, counsel should have sought "adequate accommodations" for him. Relying on *People v. Williams*, 331 Ill. App. 3d 662 (2002), in which a new trial was ordered for a defendant whose hearing aid was taken from him prior to the presentation of the State's case, and analogizing his case to cases where court translators were absent for parts of the proceedings or were inadequate and/or incompetent, defendant argues that because he did not understand the words spoken at his trial, he was rendered not present for purposes of his confrontation and due process rights. He asserts that if

counsel had advised the trial court that he was unable to understand the testimony or the proceedings, then, under the holding of *Williams*, 331 Ill. App. 3d at 667, the court would have been obliged to determine the extent of his hearing impairment and provide necessary accommodations. Finally, defendant maintains that his claim is supported by the record, as the trial transcript shows he required a hearing device at trial, "nothing in the record rebuts his allegations that the hearing device was inadequate," and the audiogram results attached to his petition establish that he suffers moderate to severe hearing loss in both ears.

¶ 14 In cases not involving the death penalty, the Post-Conviction Hearing Act (Act) provides a three-stage process for adjudication. 725 ILCS 5/122-1 (West 2014); *People v. Hodges*, 234 Ill. 2d 1, 9 (2009). The instant case involves the first stage of the process, during which the trial court independently assesses the petition, taking the allegations as true. *Hodges*, 234 Ill. 2d at 10. Based on this review, the trial court must determine whether the petition "is frivolous or is patently without merit," and, if it so finds, dismiss the petition. 725 ILCS 5/122-2.1(a)(2) (West 2014).

¶ 15 A petition may be dismissed as frivolous or patently without merit "only if the petition has no arguable basis either in law or in fact." *Hodges*, 234 Ill. 2d at 16. A petition has no arguable basis in law when it is founded in "an indisputably meritless legal theory," for example, a legal theory that is completely belied by the record. *Id.* A petition has no arguable basis in fact when it is based on a "fanciful factual allegation," which includes allegations that are "fantastic or delusional" or contradicted by the record. *Id.* at 16-17; *People v. Morris*, 236 Ill. 2d 345, 354 (2010). Our review of a first-stage dismissal is *de novo*. *Hodges*, 234 Ill. 2d at 9. Pursuant to this

standard, we review the trial court's judgment, not the reasons given for it. *People v. Jones*, 399 Ill. App. 3d 341, 359 (2010).

¶ 16 Traditionally, to establish ineffective assistance of counsel, a defendant must show (1) that counsel's representation fell below an objective standard of reasonableness; and (2) but for counsel's errors, there is a reasonable probability that the result of the trial would have been different. *Strickland v. Washington*, 466 U.S. 668, 687 (1984). However, our supreme court has indicated that in the context of first-stage postconviction proceedings, a defendant need not conclusively establish these factors; in *Hodges*, our supreme court held that "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.

¶ 17 We find that defendant has not stated an arguable claim of ineffective assistance of counsel. Defendant claimed in his petition that he "informed counsel he could not hear what the court or witnesses was saying in his criminal trial, even though defendant was admonished by the court." The core of this claim is a factual allegation by defendant that he could not hear during his trial. This allegation is rebutted by the record. First, and most important, the trial transcript reveals that defendant actually used some kind of hearing "device" to aid his hearing during trial. Defense counsel brought defendant's use of this device to the trial court's attention prior to the jury entering the courtroom, and then, once the jurors were present, the trial court informed them that the device in defendant's ear was not a cell phone, but rather, an aid to allow him to "hear better." Second, during trial, when defendant engaged in a conversation with the trial court regarding his waiver of his right to testify, he showed no lack of understanding. He answered the

trial court's questions without difficulty and did not inform the court that he had any problems hearing. Finally, when defendant addressed the trial court at length at sentencing, he made no mention of his alleged inability to hear during trial, even though he showed no hesitation in reporting several other impairments, including leukemia, a heart condition, a deteriorating spine, possible paralysis, and weight loss. He also told the court at that time that "the two years that you've been my judge, I believe, we've never had no problems" and "You've been pretty fair with me."

¶ 18 We are mindful that defendant submitted the results of an audiogram with his petition, showing that he suffers moderate to severe hearing loss. However, the audiogram was conducted on February 4, 2014, a date more than two years and seven months after trial, and it was conducted without defendant using a hearing aid. Therefore, while the audiogram reveals data about defendant's level of hearing ability without a hearing aid in February 2014, it does not provide useful information regarding his ability to hear with a hearing aid at his trial in June 2011.

¶ 19 Moreover, we note that the audiologist who analyzed defendant's audiogram concluded in her accompanying report that defendant could not function in a normal hearing world "without amplification," and recommended that he be provided with a hearing aid for his right ear. This appears to be exactly the accommodation defendant had at trial. Thus, even if defendant suffered from the same level of hearing loss in June 2011 that he did in February 2014, his use of an amplifying hearing aid at his trial would have, according to the audiologist's assessment, been the recommended remedy. Assuming as true that defendant told his attorney he could not hear at trial, and that counsel did not relay this information to the trial court, we cannot find arguable

prejudice where defendant was already using "the accommodations reasonably necessary to protect the defendant's right to confront the witnesses against him and participate in his defense." *Williams*, 331 Ill. App. 3d at 667. Further, there is no arguable prejudice arising from trial counsel's alleged ineffectiveness where, as discussed above, the record contradicts defendant's claim that he could not hear at trial.

¶ 20 Defendant's claim of ineffective assistance of counsel hinges on a factual allegation that is contradicted by the record, and he cannot show that he was arguably prejudiced by his counsel's failure to advise the trial court that he was unable to understand the court or the witnesses at trial due to his hearing impairment. Accordingly, the claim of ineffectiveness has no arguable basis in fact or in law. *Morris*, 236 Ill. 2d at 354; *Hodges*, 234 Ill. 2d at 16. As such, we find that summary dismissal of the petition was proper.

¶ 21 We are not persuaded to find otherwise by our opinion in *People v. Williams*, 331 Ill. App. 3d 662 (2002), which defendant relies upon heavily in his brief. In *Williams*, the defense called the defendant to testify. *Id.* at 663. After the court swore the defendant in, but before any questioning began, the defendant stated, "[T]hey took my hearing aid from me because they had batteries and I wasn't allowed to hear [the prosecution's case]." (Alteration in original.) *Id.* In response to the defendant's statement, the trial court instructed defense counsel to speak in a loud voice. *Id.*

¶ 22 The PSI in *Williams* disclosed that the defendant needed hearing aids for both ears. *Id.* At the sentencing hearing, the trial court asked the defendant whether he wished to say anything. *Id.* Defense counsel repeated the court's invitation, and then the following exchange occurred:

"THE COURT: Can you hear?

[DEFENSE COUNSEL]: He has a hard time hearing.

THE DEFENDANT: I'm deaf in one ear.

THE COURT: Did you hear what *** the State's Attorney[ ] said about you?

THE DEFENDANT: *** I heard some parts of it.

***

THE COURT: All right. Talk as loud as you want to." *Id.*

¶ 23 On appeal, this court determined that the Illinois Constitution protects the rights of hearing-impaired defendants to reasonable accommodations sufficient to ensure their full participation in their defenses. *Id.* at 665. We then held that when a trial court "learns that a defendant in a criminal trial suffers from a hearing impairment, the court must inquire into the nature and extent of the impairment, so that the court can determine the accommodations reasonably necessary to protect the defendant's right to confront the witnesses against him and participate in his defense." *Id.* at 667.

¶ 24 With regard to the *Williams* defendant in particular, we found that when he testified that he did not hear the prosecution's witnesses because his hearing aid had been taken away, the court was placed on notice of the defendant's hearing impairment and had a duty to inquire into its nature and extent. *Id.* Because the trial court made no such inquiry and made no provision to protect the defendant's right to hear the witnesses against him, we found that the defendant's due process and confrontation rights were violated. *Id.* Accordingly, we reversed the defendant's conviction and remanded for a new trial with instructions that the trial court "take adequate

measure to assure that defendant can hear the testimony and other evidence against him despite his hearing impairment." *Id.* at 668.

¶ 25 Two circumstances distinguish the instant case from *Williams*. First, the *Williams* defendant had his hearing aid taken from him before the prosecution put on its case, while here, there is no dispute that defendant used a hearing device during trial. Second, in *Williams*, the defendant told the trial court during trial that due to his hearing aid being taken away, he had been unable to hear the witnesses against him. Here, in contrast, defendant never made such an assertion; instead, defense counsel drew the trial court's attention to the defendant's use of a device that aided his hearing. Both trial courts were made aware that the defendants had hearing impairments. However, while the court in *Williams* was placed on notice that the defendant could not hear due to the absence of a hearing aid, the trial court here was placed on notice that defendant's hearing impairment had been accommodated. In these circumstances, we cannot find that the trial court was obliged to determine the extent of defendant's hearing impairment and provide further accommodations.

¶ 26 Finally, we note defendant's argument that the fact he was able to engage in a "brief colloquy" with the trial court when he waived his right to testify does not undermine his allegation that he could not understand the witnesses and the court during other parts of his trial. He observes that in *Williams*, this court quoted a New York court's finding that a defendant's ability " 'to hear a list of words given her in a controlled test setting, does not mean she has the ability to hear testimony given in a narrative style at a trial.' " *Williams*, 331 Ill. App. 3d at 665 (quoting *People v. Doe*, 602 N.Y.S.2d 507, 509-10 (N.Y. Crim. Ct. 1993)). Relying on this reasoning, defendant concludes, "Thus, the fact that [defendant] was able to respond when the

trial judge asked him if he was voluntarily waiving his right to testify does not rebut his allegation that he could not understand witness testimony and other proceedings that took place."

¶ 27 The New York case identified by defendant is *People v. Doe*, 602 N.Y.S.2d 507 (1993). In *Doe*, the defendant's hearing impairment came to the trial court's attention when she testified in her own defense and mentioned "that she had some hearing problems." *Id.* at 508. After a jury found the defendant guilty, the trial court ordered an audiological exam. *Id.* at 509. The exam's administrator reported in a letter that the defendant "in a quiet, sound proof environment, could understand 92% of a list of words presented at normal conversational levels." *Id.* An "oral interpreter" was ordered to be present at all subsequent trial court proceedings in order to assist the defendant in lip reading. *Id.* The appellate court held that a hearing impaired person is deprived of due process if court proceedings are conducted without assistance. *Id.* The appellate court determined that the defendant was entitled to the services of an interpreter at trial, stating, "The fact that [the defendant] is able to hear a list of words given her in a controlled test setting, does not mean she has the ability to hear testimony given in a narrative style at a trial." *Id.* at 509-10.

¶ 28 We do not agree with the conclusion defendant has extrapolated from *Doe*. In *Doe*, testing demonstrated that the defendant was able to hear in a sound proof environment. Here, in contrast, defendant engaged in a dialog with the trial court in the courtroom, an environment the *Doe* court described as "not the optimal setting for a hearing impaired individual" due to courtrooms having poor acoustics and prevalent background noise. *Id.* at 509. In this case, had defendant and the trial court conversed in a sound proof room, we might agree that any such exchange would not be informative as to defendant's ability to hear at trial. However, that is not

what happened here. Here, defendant spoke with the trial court in the courtroom that served as the setting for his trial. Thus, defendant's ability to respond to the trial court's questions does rebut his allegation that he could not hear what the court or witnesses were saying at trial.

¶ 29 In summary, because defendant's claim of ineffective assistance of counsel is based on a factual allegation that is contradicted by the record, it has no arguable basis in fact. See *Morris*, 236 Ill. 2d at 354. In addition, because he cannot show arguable prejudice, his claim has no arguable basis in law. *Hodges*, 234 Ill. 2d at 16-17. Accordingly, the trial court did not err in summarily dismissing the petition.

¶ 30 Defendant's second contention on appeal is that the mittimus should be corrected to reflect three additional days of presentencing custody credit, for a total of 62 days. The State concedes that the mittimus does not correctly reflect that defendant was in presentence custody for 62 days, and the parties agree that this court should order the clerk of the circuit court to correct the mittimus. Despite the State's concession and the parties' agreement, we find that we lack subject matter jurisdiction to grant the relief defendant requests.

¶ 31 Defendant did not challenge his presentence custody credit in the trial court, on direct appeal, or in his postconviction petition. He is raising the issue for the first time in this appeal. However, a claim for additional presentence custody credit may not be raised for the first time on appeal from the dismissal of a postconviction petition. *People v. Nelson*, 2016 IL App (4th) 140168, ¶¶ 27-39; *People v. Morrison*, 2016 IL App (4th) 140712, ¶¶ 11-21. A claim for presentence custody credit is wholly based on a statutory provision, specifically, section 5-4.5-100(b) of the Unified Code of Corrections (Code), which provides that an "offender shall be given credit *** for the number of days spent in custody as a result of the offense for which the

sentence was imposed." 730 ILCS 5/5-4.5-100(b) (West 2010) (formerly section 5-8-7(b) of the Code (730 ILCS 5/5-8-7(b) (West 2008)). The Act permits a prisoner to file a postconviction petition to establish "a substantial denial of his or her rights under the Constitution of the United States or of the State of Illinois or both." 725 ILCS 5/122-1(a)(1) (West 2014). Statutes do not confer constitutional rights; therefore, an allegation of a deprivation of a statutory right is not a proper claim under the Act. *People v. Mitchell*, 189 Ill. 2d 312, 329 (2000). Postconviction petitioners are barred from seeking additional sentencing credit – a statutory claim not of constitutional magnitude – under the Act. *Nelson*, 2016 IL App (4th) 140168, ¶ 28 (citing *People v. Reed*, 335 Ill. App. 3d 1038, 1040 (2003); *People v. Uran*, 196 Ill. App. 3d 293, 294 (1990); *People v. Bates*, 179 Ill. App. 3d 705, 709 (1989)). In turn, they may not raise the issue of presentencing custody credit for the first time on appeal from the dismissal of a postconviction petition. See *Morrison*, 2016 IL App (4th) 140712, ¶ 13; *Nelson*, 2016 IL App (4th) 140168, ¶¶ 27, 39.

¶ 32 We cannot grant defendant the presentence custody credit to which he and the State agree he is entitled. However, defendant is not completely without recourse. Because trial courts retain jurisdiction to correct nonsubstantial matters of inadvertence or mistake, he may petition the trial court to correct the simple error in arithmetic that occurred here. *Morrison*, 2016 IL App (4th) 140712, ¶ 21; *Nelson*, 2016 IL App (4th) 140168, ¶ 39.

¶ 33 For the reasons explained above, we affirm the judgment of the circuit court.

¶ 34 Affirmed.