2018 IL App (1st) 162439-U

FOURTH DIVISION
December 27, 2018

No. 1-16-2439

IN THE APPELLATE COURT
OF ILLINOIS
FIRST JUDICIAL DISTRICT

THE PEOPLE OF THE STATE OF ILLINOIS, Respondent-Appellee, v. ANTHONY HORTON, Petitioner-Appellant.	)	Appeal from the Circuit Court of Cook County No. 94 CR 8733 Honorable Mary Margaret Brosnahan, Judge Presiding.

JUSTICE REYES delivered the judgment of the court.
Justices Gordon and Burke concurred in the judgment.

ORDER

¶ 1 *Held*: Affirming the judgment of the circuit court of Cook County where the denial of defendant's postconviction claim of ineffective assistance of trial counsel was not manifestly erroneous.

¶ 2 Defendant Anthony Horton appeals from the denial of his petition for relief under the

Post-Conviction Hearing Act (Act) (725 ILCS 5/122-1 *et seq.* (West 2008)) after a third-stage evidentiary hearing. Defendant contends the circuit court's denial of his petition was manifestly erroneous where he made a substantial showing that his trial counsel provided ineffective assistance by giving erroneous advice which caused him to forfeit his right to directly appeal his conviction. We disagree and affirm the judgment of the circuit court.

¶ 3 BACKGROUND

¶ 4 Defendant was charged with the first degree murder of Steven Green based on a gang-related incident that occurred on January 23, 1994. At the bond hearing, the trial court informed defendant that he was required to appear in court and if he failed to do so, the trial would continue in his absence.

¶ 5 The bench trial commenced on May 11, 1995, with defendant present. The day after the defense rested, defendant failed to appear in court. Defendant's counsel explained that defendant had received death threats from gang members and was possibly in hiding. Because defendant had been admonished that he could be tried *in absentia*, the court issued a warrant for his arrest and continued to closing arguments.

¶ 6 On June 1, 1995, the trial court found defendant guilty of first degree murder. Defendant's motion for new trial was denied. On August 18, 1995, the court sentenced defendant *in absentia* to 35 years in prison.

¶ 7 Defendant was eventually arrested in Louisiana and returned to this jurisdiction in June 2007. On September 18, 2007, defendant's appointed counsel (herein trial counsel)[1] informed the court that he had prepared a motion for new trial pursuant to section 115-4.1(e) of the Code of Criminal Procedure of 1963 (Code) (725 ILCS 5/115-4.1(e) (West 2006). Section 115-4.1(e)

[1] We note that defendant was represented by private counsel during the 1995 trial and sentencing.

provides, in relevant part:

> "When a defendant who in his absence has been *** both convicted and sentenced appears before the court, he must be granted a new trial or new sentencing hearing if the defendant can establish that his failure to appear in court was both without his fault and due to circumstances beyond his control." *Id.*[2]

Counsel explained that defendant requested the motion not be filed because he did not want to risk receiving a greater sentence if the motion for a new trial was granted. Instead, defense counsel filed a motion to reconsider the sentence, which was denied. The trial court granted leave to file a notice of appeal from the August 18, 1995, judgment.

¶ 8 Subsequently, defendant's appellate counsel filed a motion to withdraw pursuant to *Anders v. California,* 366 U.S. 738 (1967). This court granted counsel's motion and dismissed defendant's direct appeal. *People v. Horton,* No. 1-07-2688 (2009) (unpublished order under Illinois Supreme Court Rule 23 (eff. May 30, 2008)). This court explained that it did not have jurisdiction to consider defendant's appeal because defendant had failed to file a motion to reconsider sentence or a notice of appeal within 30 days of the final judgment: "Having failed to invoke our jurisdiction to consider an appeal from his conviction, he was limited to the method provided to absent defendants in section 115-4.1(e) of the Code. [Citation omitted]." *Horton*, No. 1-07-2688, at 4.

¶ 9 On September 1, 2009, defendant filed a *pro se* postconviction petition claiming he received ineffective assistance of trial counsel. Specifically, defendant alleged counsel advised

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[2] If the section 115-4.1(e) motion is granted, the defendant receives a new trial or a new sentencing hearing. If the section 115-4.1(e) motion is denied, then the defendant may file a notice of appeal, which "may also include a request for review of the judgment and sentence not vacated by the court." 725 ILCS 5/115-4.1(g) (West 2006); *People v. Pontillo,* 267 Ill. App. 3d 27, 33-34 (1994).

him that he could appeal his underlying conviction without filing a section 115-4.1(e) motion. Counsel also informed defendant that if his section 115-4.1(e) motion was granted, defendant risked receiving a greater sentence. Relying on this advice, defendant agreed not to file the section 115-4.1(e) motion. Defendant also alleged his appellate counsel later informed him that the only way he could appeal the underlying conviction was by filing a section 115-4.1(e) motion. Defendant concludes that he received ineffective assistance because he lost his right to appeal his underlying conviction based on trial counsel's erroneous advice.

¶ 10 The trial court summarily dismissed defendant's postconviction petition and he appealed. On appeal before this court, we concluded that defendant presented an arguable claim of ineffective assistance of counsel. *People v. Horton*, 2011 IL App (1st) 093335-U, ¶ 21 (unpublished order under Illinois Supreme Court Rule 23 (eff. July 1, 2011)). We explained that based on the split in authority between *People v. Laster*, 328 Ill. App. 3d 391 (2002), *People v. Lozada*, 323 Ill. App. 3d 1015 (2001), *People v. Sayles*, 130 Ill. App. 3d 882 (1985), and *People v. Manikowski*, 288 Ill. App. 3d 157 (1997), "defendant arguably forfeited his rights pursuant to section 115-4.1 when he relied on his counsel's alleged advice that he could appeal his underlying conviction and sentence without filing a section 115-4.1(e) motion." *Id.* Accordingly, we reversed the judgment of the circuit court and remanded the matter for further postconviction proceedings. *Id.* ¶ 22.

¶ 11 On remand, the circuit court appointed counsel to represent defendant, who subsequently filed a supplemental postconviction petition on February 6, 2014. On June 12, 2014, the State filed a motion to dismiss the supplemental petition. Relying on *Manikowski*, the State asserted that petitioner did not suffer any prejudice from his trial counsel's performance because he still had the option of filing a section 115-4.1(e) motion.

¶ 12 After the matter was fully briefed and argued, the circuit court entered a written order denying the State's motion to dismiss the postconviction petition, finding that defendant made a substantial showing of a constitutional violation where, based on *Laster* and *Lozada*, defendant was required to file a section 115-4.1(e) motion when he appeared before the trial court on September 18, 2007, and that because he failed to do so, he is now "precluded from ever filing such a motion and it necessarily follows that [defendant] has lost his right to appeal his conviction and sentence." The circuit court advanced the matter to a third-stage evidentiary hearing "to determine the nature and extent of the advice that trial counsel provided to [defendant]."

¶ 13 The third-stage evidentiary hearing was conducted on January 28, 2016. Defendant testified on that date and then the matter was continued to May 19, 2016, for trial counsel to testify. The following evidence was adduced.

¶ 14 Defendant testified that he was extradited to Chicago in 2007 and first appeared in court in June of that year. Trial counsel was appointed to represent him. On his first court date, defendant spoke with trial counsel at the courthouse seeking advice on how to proceed. Trial counsel informed him about "a 115 something I wasn't sure what it was," but that trial counsel said he was going to "file something" on defendant's behalf.

¶ 15 In regards to the section 115-4.1(e) motion, defendant testified that he informed trial counsel he did not want to file anything that could lead to him having to serve more time. Trial counsel then obtained a continuance. At the next court date, trial counsel filed a motion to reduce his sentence and it was denied. According to defendant, after the motion was denied, "I think we talked about an appeal, if I'm not mistaken" and that trial counsel ultimately filed an appeal.

¶ 16 Regarding the affidavit he attached to his postconviction petition, defendant testified it was filled out by his postconviction counsel and mailed to him. He subsequently read the affidavit, signed it, had it notarized and mailed back to postconviction counsel.

¶ 17 Defendant further testified that trial counsel did not inform him that he had to file a section 115-4.1(e) motion before he could appeal his conviction and sentence. Defendant also testified that he would have asked trial counsel to file the section 115-4.1(e) motion even if it meant that his sentence could be increased so long as he would be able to appeal his conviction and sentence. In addition, defendant testified that trial counsel never informed him that a motion to reconsider his sentence was "useless" because it was "beyond the 30-day limit."

¶ 18 On cross-examination, defendant testified that trial counsel explained the conviction and sentence to him. He also explained that he could file a motion for a new trial and a motion to have his sentence reduced. According to defendant, trial counsel never explained to him what these motions were in full and did not show him copies of the motions. After being presented with a draft of the section 115-4.1(e) motion, defendant testified that he could have seen it previously, "but I'm not a hundred percent sure. It don't ring a bell with me." Upon viewing the filed motion to reconsider sentence, defendant testified he could not remember seeing the motion before. Defendant could not remember whether trial counsel conferred with him as to which motion he would file. When questioned whether he told trial counsel that he "just wanted to be done" with the case and serve his sentence, defendant replied, "No. I wanted to try and get out and be with my family. I want to try and appeals [*sic*] so I can be with my family." He did, however, reconfirm that he instructed trial counsel not to file the section 115-4.1(e) motion. This was because trial counsel "told me that if I filed for a petition, I could get more time. I didn't want to get more time."

¶ 19 On redirect, defendant testified that had he known he would have lost his right to appeal by not filing the proper motion he would have instructed trial counsel to file it.

¶ 20 Trial counsel, Kevin Ochalla, testified he was currently employed by the Cook County Public Defender's Office and had been working there since February 2003. In June 2007, he was assigned to represent defendant. At that point, defendant was not charged with an offense, as the matter had been tried *in absentia* and defendant was sentenced *in absentia*. After he was appointed, he spoke with defendant about his 13-year absence from the jurisdiction. Defendant explained to him that there were some extenuating circumstances behind his absence during the trial and sentencing. Trial counsel testified he explored those issues to determine if there was "anything there that we can file a credible motion on." As a result of his conversation with defendant, trial counsel prepared two motions: a section 115-4.1(e) motion and a motion to reconsider the sentence. Trial counsel further testified he explained the section 115-4.1(e) motion to defendant. According to trial counsel, he informed defendant that if the motion was granted he would receive a new trial and could be sentenced to 20 to 60 years. He further informed defendant that if a new trial was granted, "that basically we would start where we were --- where you were day one in 1994 or '95 when the case was first heard. And then, we would call witnesses and both the state would call theirs and we would call ours if we had any and go forward." Trial counsel testified he believed he presented defendant with a copy of the motion. Defendant instructed trial counsel not to file the motion because "he just wanted to do his time and that was fine." Defendant then agreed to file the motion to reduce sentence.

¶ 21 Regarding the appeal from the motion to reduce sentence, trial counsel testified that he spoke with defendant about filing the appeal and that he did not know "what effect it would have as – I mean, if the appellate court came back and said, your thirty days were done outside of –

after the sentencing, you know we are well beyond that at this point. But I believe I filed a notice of appeal just to be on the safe side anyway." Trial counsel further testified that he informed defendant that if he wanted to file the section 115-4.1(e) motion, to contact him within the next 30 days and he "would be happy to do that." Defendant did not contact him.

¶ 22 Trial counsel further testified regarding portions of his case log that were later admitted into evidence. Trial counsel testified he used a case log to remember what he was doing in the case "each and every time." Trial counsel testified regarding a notation he made in the case log on September 18, 2007, that defendant "indicated that he wanted to take his time and be done with the case here in Chicago and that the issue of the motion for new trial, he didn't want to go forward with that."

¶ 23 On cross-examination, trial counsel testified that from 2004 to 2007 he had encountered defendants who had been tried *in absentia* three times, as it was not a common occurrence. Regarding filing the appeal after the denial of the motion to reconsider sentence, trial counsel testified that he did so because he "didn't want to be the person that didn't do something to perfect [the appeal]." He also testified that, "If there was a shot at an appeal and [defendant] wanted to take it, I wanted to do what I could to make sure that that happened. I don't know if we had a chance because of the amount of time that was there. But I couldn't [*sic*] want to foreclose that option for him if it was possible."

¶ 24 After the parties rested, the section 115-4.1(e) motion, motion to reconsider sentence, defendant's affidavit, trial counsel's case log, and the notice of appeal were admitted into evidence.

¶ 25 On July 14, 2016, the circuit court issued a written order denying defendant's postconviction petition. The circuit court concluded that defendant failed to prove, by a

preponderance of the evidence, that his trial counsel was ineffective in providing him incorrect advice that caused him to forfeit his right to appeal his conviction. The circuit court stated that "[t]his finding is largely attributable to the credibility of the witnesses." To that end, the circuit court found that trial counsel's "testimony was believable, and that [defendant's] testimony was not." The circuit court ultimately found that trial counsel "did *not* give [defendant] any erroneous advice, such as telling [defendant] that he would be able to appeal his conviction and sentence without filing a Section 115-4.1(e) motion for a new trial." (Emphasis in original.) The circuit court continued:

> "This was not a complex issue for [trial counsel]. He was handed the case after [defendant] had already been tried and sentenced *in absentia*, and the only issue before him was whether to file a Section 115-4.1(e) motion for a new trial. [Trial counsel] conducted an investigation and did, in fact, prepare a motion under Section 115-4.1(e). This is clearly a situation where [defendant's] attorney knew full well the appropriate motion to file to trigger review and was prepared to file it. It was petitioner who declined that course of action, after a full consultation about the consequences that he faced.
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> To be sure, [trial counsel] did end up filing a notice of appeal, but the Court refuses to draw a negative inference from that action, as [defendant] requests. At the evidentiary hearing, [trial counsel] credibly testified that he filed a notice of appeal in the interest of protecting petitioner's rights. As [trial counsel] himself testified, he 'did not know what effect it would have,' and he filed it 'just to stay on the safe side.' The Court finds this testimony to be trustworthy. In filing the superfluous notice of appeal, [trial counsel] was simply fulfilling the Cook County Public Defender's Office's tradition of scrupulously protecting the rights of the accused. [Defendant] therefore has not

established, by a preponderance of the evidence, that he received ineffective assistance from [trial counsel]."

This appeal followed.

¶ 26 ANALYSIS

¶ 27 On appeal, defendant argues the circuit court erred in denying his postconviction petition where he made a substantial showing that his trial counsel provided ineffective assistance by giving erroneous advice which caused him to forfeit his right to directly appeal his conviction.

¶ 28 A postconviction proceeding is a collateral attack on the trial court proceedings, allowing a defendant to challenge substantial deprivations of constitutional rights that were not, and could not have been, adjudicated previously. *People v. Davis*, 2014 IL 115595, ¶ 13. The Act provides a three-stage process for adjudicating postconviction petitions. *People v. Beaman*, 229 Ill. 2d 56, 71 (2008). In this case, the petition advanced to a third-stage hearing where testimony and evidence are adduced and the circuit court serves as the fact finder. See 725 ILCS 5/122-6 (West 2008). At a third-stage hearing, "the defendant no longer enjoys the presumption that the allegations in his petition and accompanying affidavits are true" that he did at the first and second stages. *People v. Gacho*, 2016 IL App (1st) 133492, ¶ 13. It is the court's function during this hearing to determine witness credibility, decide the weight to be given testimony and evidence, and resolve any evidentiary conflicts. *People v. Domagala*, 2013 IL 113688, ¶ 34. In weighing the testimony of the witnesses at the third stage, the circuit court "is not required to disregard inferences which flow normally from the evidence before it, nor must [it] search out all possible explanations consistent" with granting relief. *In re Jonathon C.B.*, 2011 IL 107750, ¶ 60. Ultimately, the circuit court must determine whether the evidence introduced demonstrates that the defendant is, in fact, entitled to relief, *i.e.*, that the defendant established a substantial

deprivation of federal or state constitutional rights in the proceedings that produced the challenged judgment. *People v. English*, 2013 IL 112890, ¶ 21.

¶ 29 Generally, our review of the denial of a postconviction petition is *de novo*. *People v. Hommerson*, 2014 IL 115638, ¶ 6. However, after an evidentiary hearing where fact-finding and credibility determinations are involved, the circuit court's decision will not be reversed unless it is manifestly erroneous. *Beaman*, 229 Ill. 2d at 72. This standard recognizes that "we must give great deference to the trial court's factual findings because the trial court stands in the best position to weigh the credibility of the witnesses." *In re Floyd*, 274 Ill. App. 3d 855, 867 (1995); see also *People v. Coleman*, 183 Ill. 2d 366, 384 (1998) (noting that "the post-conviction trial judge is able to observe and hear the witnesses at the evidentiary hearing and, therefore, occupies a 'position of advantage in a search for the truth' which 'is infinitely superior to that of a tribunal where the sole guide is the printed record' " (quoting *Johnson v. Fulkerson*, 12 Ill. 2d 69, 75 (1957))). "Manifest error" is an error that is clearly evident, plain, and indisputable. *People v. Stark*, 365 Ill. App. 3d 592, 598 (2006).

¶ 30 Furthermore, where "the judge presiding over postconviction proceedings has some 'special expertise or familiarity' with the trial or sentencing of the defendant and that 'familiarity' has some bearing upon disposition of the postconviction petition" we also review the denial of the petition for manifest error. *People v. Pendleton*, 223 Ill. 2d 458, 473 (2006) (quoting *People v. Caballero*, 206 Ill. 2d 65, 87-88 (2002)). We observe that the circuit court judge who presided over every stage of defendant's postconviction petition was also the judge who ruled on the motion to reconsider the sentence in September 2007. Consequently, the circuit court judge had special expertise and familiarity with trial counsel's representation of defendant during the hearing at issue. Because the judge presiding over the postconviction

petition had such expertise and familiarity and considered the credibility of the witnesses during the evidentiary hearing, we review the matter for manifest error. See *Beaman*, 229 Ill. 2d at 72.

¶ 31 Defendant argues he made a substantial showing that his trial counsel provided ineffective assistance by giving him the erroneous advice that a section 115-4.1(e) motion was unnecessary to preserve his right to appeal and that defendant could still appeal his conviction and sentence from the denial of a motion to reduce sentence.

¶ 32 In response, the State observes that no corroborating testimony or evidence was adduced at the evidentiary hearing establishing trial counsel provided defendant with erroneous advice. The State, however, notes that postconviction counsel "never directly asked [trial counsel] whether he told [defendant] about the appellate consequences related to not filing a 115-4.1(e) motion" and that the State also did not specifically ask that question. Thus, according to the State, whether defendant was so incorrectly advised was a credibility determination between the witnesses who testified and the circuit court found that trial counsel's testimony was believable and defendant's was not.

¶ 33 In *People v. Albanese*, 125 Ill. 2d 100 (1988), the supreme court adopted the standard set forth in *Strickland v. Washington*, 466 U.S. 668 (1984), for determining whether a criminal defendant was denied effective assistance of trial counsel under both the state and federal constitutions. *People v. Chatman*, 276 Ill. App. 3d 619, 622 (1995). To succeed on a claim of ineffective assistance of counsel under the *Strickland* standard, a defendant must establish that counsel's performance fell below an objective standard of reasonableness and that counsel's deficient performance resulted in prejudice. *People v. Ross*, 229 Ill. 2d 255, 260 (2008). "Further, in order for a defendant to establish that he suffered prejudice, he must show a reasonable probability that, but for counsel's deficient performance, the result of the proceedings

would have been different." *People v. Burt*, 205 Ill. 2d 28, 39 (2001). "Because a defendant must establish both a deficiency in counsel's performance and prejudice resulting from the alleged deficiency, failure to establish either proposition will be fatal to the claim." *People v. Sanchez*, 169 Ill. 2d 472, 487 (1996).

¶ 34 "Neither mistakes in strategy nor the fact that another attorney with the benefit of hindsight would have proceeded differently is sufficient to establish ineffective assistance of counsel." *People v. Dobbs*, 353 Ill. App. 3d 817, 827 (2004). Additionally, a defendant "cannot rely on speculation or conjecture to justify his claim of incompetent representation." *People v. Holman*, 164 Ill. 2d 356, 369 (1995). "Counsel is presumed to know the law" (*People v. Perkins*, 229 Ill. 2d 34, 51 (2007)), and "a court must indulge a strong presumption that counsel's conduct falls within the wide range of reasonable professional assistance; that is, the defendant must overcome the presumption that, under the circumstances, the challenged action 'might be considered sound trial strategy.' " (*Strickland*, 466 U.S. at 689 (quoting *Michel v. Louisiana*, 350 U.S. 91, 101 (1955))).

¶ 35 Defendant maintains that trial counsel's testimony established his "actions belied his knowledge of the law" therefore we can infer that he provided defendant with erroneous advice as to the appeal consequences of not filing a section 115-4.1(e) motion. Specifically, defendant points to the fact that trial counsel filed a motion to reconsider sentence when the trial court lacked jurisdiction to hear the matter. Defendant also notes that trial counsel then filed a notice of appeal from the denial of that motion where the appellate court lacked jurisdiction.

¶ 36 We disagree with defendant's contentions. First, defendant cites no case law for his proposition that we can infer trial counsel provided the allegedly erroneous legal advice regarding the section 115-4.1(e) motion based on his other actions. See Ill. S. Ct. R. 341(h)(7)

(eff. Nov. 1, 2017). Second, it is obvious from the record and testimony that trial counsel was aware of the jurisdictional issue when he presented the motion to reconsider sentence. In September 2007, trial counsel informed the court that he was prepared to file the section 115-4.1(e) motion or a motion to reconsider the sentence, but at the request of defendant he was filing the motion to reconsider the sentence. Moreover, upon the denial of this motion, trial counsel requested leave from the trial court to file a late notice of appeal, which was granted. Trial counsel also testified that he did not know if the appeal "had a chance" because of the timing, but that he did not want to "foreclose that option for him if it was possible." Accordingly, we cannot agree with defendant that trial counsel's other actions in this case lead to the inference that he provided the erroneous advice as alleged by defendant.

¶ 37 We conclude the circuit court's ruling that trial counsel's performance was not unreasonable under *Strickland* was not manifestly erroneous. The evidence adduced at the evidentiary hearing did not establish that trial counsel provided erroneous advice. Defendant produced no evidence to corroborate his testimony that trial counsel did not inform him that he had to file a section 115-4.1(e) motion before he could appeal his conviction and sentence. While defendant did produce his own affidavit, this evidence is self-serving (see *People v. Hale*, 2013 IL 113140, ¶ 24) and is therefore not enough to meet the "substantial deprivation" standard as required under the Act. See *English*, 2013 IL 112890, ¶ 21; 725 ILCS 5/122-1 (West 2008). As correctly noted by the State, no evidence was elicited from trial counsel that he informed defendant a section 115-4.1(e) motion was unnecessary to preserve his right to directly appeal the conviction and sentence. The testimony that was corroborated, specifically by trial counsel's case log, was that defendant was presented with a section 115-4.1(e) motion and he declined to file it because he "just wanted to take the time and be done with the case here in Chicago" and

thus "he did not want me to file a request for a hearing to determine if he was sentenced in absentia illegally." Given the testimony and evidence presented at the evidentiary hearing, there is no "indisputable" or manifest error in the decision to deny the postconviction claim, particularly where the circuit court expressly stated its denial of the postconviction petition turned on the credibility of the witnesses.

¶ 38 Here, the circuit court found defendant's testimony at the evidentiary hearing to be incredible. In rendering its determination, the circuit court stated that its finding was "largely attributable to the credibility of the witnesses" and concluded that trial counsel's testimony was believable and that defendant's was not. We are required to give great deference to the circuit court's factual findings. *Floyd*, 274 Ill. App. 3d at 867. This is because the circuit court "occupies a 'position of advantage in a search for truth' which 'is infinitely superior' " to this court where our sole guide is a cold record. *Coleman*, 183 Ill. 2d at 384 (quoting *Johnson*, 12 Ill. 2d at 75). Thus, because the trial court's denial of defendant's postconviction claim was based on the credibility of the witnesses to which we give great deference, we cannot say that this determination was an error so clearly evident, plain, or indisputable to warrant reversal. See *Stark*, 365 Ill. App. 3d at 598.

¶ 39 We further observe that in its order denying the State's motion to dismiss the postconviction petition the circuit court expressly stated that the petition must proceed to a third-stage evidentiary hearing to "determine the nature and extent of the advice that trial counsel provided to [defendant]." Thus, the parties were aware that the purpose of the evidentiary hearing was to glean information from trial counsel and defendant regarding the advice that was provided. It was defendant's burden to prove that trial counsel provided erroneous advice as alleged and defendant failed to do so. See *Pendleton*, 223 Ill. 2d at 473 ("Throughout the second

and third stages of a postconviction proceeding, the defendant bears the burden of making a substantial showing of a constitutional violation.").

¶ 40 Therefore, based on the evidence produced at the evidentiary hearing along with the credibility determinations rendered by the circuit court, we conclude that defendant failed to demonstrate trial counsel's representation fell below an objective standard of reasonableness. See *People v. Williams*, 2017 IL App (1st) 152021, ¶ 43; People v. English, 403 Ill. App. 3d 121, 135-36 (2010) (upholding the circuit court's denial of a postconviction petition at the third stage based on its credibility findings); see also *Sanchez*, 169 Ill. 2d at 487 (failure to establish one prong of *Strickland* is fatal to an ineffective assistance claim). Accordingly, we affirm the judgment of the circuit court.

¶ 41 CONCLUSION

¶ 42 For the reasons stated above, the judgment of the circuit court of Cook County is affirmed.

¶ 43 Affirmed.