2018 IL App (1st) 163225-U

No. 1-16-3225

Order filed December 20, 2018

Fourth 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. 97 CR 21738
	)	
WALTER BLOUNT,	)	Honorable
	)	Paula M. Daleo,
Defendant-Appellant.	)	Judge presiding.

PRESIDING JUSTICE McBRIDE delivered the judgment of the court.
Justices Gordon and Reyes concurred in the judgment.

ORDER

¶ 1 *Held*: The trial court's order dismissing defendant's successive postconviction petition is affirmed over his contentions that (1) he established a claim of actual innocence, (2) postconviction counsel was ineffective, and (3) his 65-year sentence for offenses he committed when he was 17 years old is unconstitutional.

¶ 2 Defendant Walter Blount appeals from the trial court's order dismissing his successive postconviction petition at the second stage under the Post-Conviction Hearing Act (725 ILCS 5/122-1 *et seq.* West 2016)). On appeal, defendant contends that (1) his successive

postconviction petition supports a claim of actual innocence based on the recantation affidavit of Brian Holmes, who testified for the State at trial, (2) postconviction counsel was ineffective because, in defendant's original postconviction petition, counsel did not "employ" the Holmes affidavit in a proper fashion to support a claim of actual innocence, and (3) his sentence of 65 years in prison for offenses he committed when he was 17 years old is unconstitutional. We affirm.

¶ 3 Following a 1999 jury trial, defendant was convicted of first degree murder, attempted murder, and aggravated battery with a firearm based on an accountability theory. He was sentenced to 45 years in prison for first degree murder and 20 years in prison for attempted murder, to be served consecutively. We affirmed his convictions and sentences on direct appeal. *People v. Blount*, No. 1-99-2420 (2001) (unpublished order under Illinois Supreme Court Rule 23). We also affirmed the trial court's summary dismissal of defendant's original postconviction petition. *People v. Blount*, No. 1-02-0234 (2002) (unpublished order under Illinois Supreme Court Rule 23).

¶ 4 As an initial matter, we note that the record on appeal does not contain the report of proceedings or common law records for defendant's direct appeal (Case No. 1-99-2420) or his appeal from the dismissal of his original postconviction petition (Case No. 1-02-0234). Although defendant states in his opening brief that these records will be filed as a supplemental record in the instant case, he has not done so. As the appellant, it is defendant's burden to present a complete record on appeal and we will construe any doubts arising from the incomplete record against him. See *People v. Smith*, 406 Ill. App. 3d 879, 886 (2010). Our summary of the evidence presented at trial and of the initial postconviction proceeding is taken from our prior orders

affirming his convictions and sentences on direct appeal (*People v. Blount*, No. 1-99-2420 (2001) (unpublished order under Illinois Supreme Court Rule 23)) and the summary dismissal of his original postconviction petition (*People v. Blount*, No. 1-02-0234 (2002) (unpublished order under Illinois Supreme Court Rule 23)).

¶ 5 Defendant's convictions arose from a gang-related shooting that occurred on July 9, 1997, and resulted in the death of Mary Harris and injury to Cary Rouse. The evidence at trial established that defendant, Marcus Blackwell, Brian Holmes, and KeShawn Huston were members of the 4 Corner Hustlers gang, which occupied territory near 16th Street and Randolph Street, in Maywood, Illinois. The Black P-Stones, a rival gang, occupied neighboring territory around the intersection of 19th Street and Van Buren Street, in Maywood.

¶ 6 Holmes testified that, on the night of July 9, 1997, he, defendant, Huston, and Blackwell were driving around in Maywood in a burgundy Chevrolet Citation. Defendant was driving, Blackwell was in the front passenger seat, and Huston and Holmes were in the back seats. They stopped to speak to Brian Moore, another member of the 4 Corner Hustlers gang, who told them that members of the Black P-Stones gang had shot at him. The four men then retrieved a .380 semi-automatic handgun that Blackwell kept in the bushes near their gang territory and defendant drove them to the territory occupied by the Black P-Stones. Defendant drove past the intersection of 19th and Van Buren about three or four times and then circled around for one additional pass. On the final pass, defendant slowed the car down in the middle of the intersection and stated, "I think that's them." Blackwell placed his arm outside the vehicle and discharged between four and six gunshots at a crowd of eight or nine people on the street. Defendant sped off.

¶ 7 The bullets struck two victims, Harris and Rouse. Harris eventually died from a gunshot wound that penetrated her heart and Rouse was critically injured.

¶ 8 Kecia Williams, Nayania Poole, and Antoinette Hughes testified that, before the shooting, at about 11:15 p.m., they were standing in front of Harris's home near 19th and Van Buren. When Harris asked the group standing outside to leave, the three girls walked down Van Buren and turned on 11th Street. Williams testified that, about 15 minutes later, she saw a vehicle travelling northbound on 11th Street and Poole testified that the vehicle was a burgundy Chevrolet Citation. The vehicle approached them at a slow speed. Williams, Poole, and Hughes all identified defendant as the driver of the vehicle. Hughes asked defendant for a ride home, but defendant smiled and kept going. Williams and Hughes testified that Holmes was in the back seat of the vehicle.

¶ 9 An evidence technician testified that he recovered five shell casings and one live round from a .380 semi-automatic revolver from the scene of the shooting. Maywood police officer John Mazariegos testified that he received information that the offenders were in a red Chevy hatchback and searched for that vehicle. He saw a burgundy Chevrolet Citation the next morning and pursued it. When he was one block away, three men jumped out of the car while it was still moving but Mazariegos could not apprehend them. Eventually, defendant, Holmes, and Blackwell were apprehended. Williams, Poole, and Hughes viewed a lineup and each identified defendant as the driver of the vehicle they saw on the night of the shooting. Williams and Hughes identified Holmes in a lineup as a passenger in the back seat of the vehicle.

¶ 10 Holmes testified that, at the police station, he received his *Miranda* rights and informed the police and the assistant state's attorney what happened on the night of the shooting. He told

the jury that, after the State charged him with first degree murder, he accepted a plea deal. In exchange for his truthful testimony against defendant and Blackwell, Holmes would be convicted of aggravated battery with a firearm and sentenced to six years in prison.

¶ 11 Defendant's mother Velma Blount and his great aunt Bobbie Hamilton testified for defendant, but did not know where defendant was at the time of the shooting.

¶ 12 The jury found defendant guilty of first degree murder, attempted murder, and aggravated battery with a firearm. The circuit court sentenced him to 65 years in prison: 45 years for first degree murder and 20 years for attempted murder, to be served consecutively. Defendant appealed, and we affirmed his convictions and sentences. *People v. Blount*, No. 1-99-2420 (2001) (unpublished order under Illinois Supreme Court Rule 23).

¶ 13 In 2001, defendant, through private counsel, filed a postconviction petition. He alleged claims of ineffective assistance of trial and appellate counsel and that his consecutive sentences were unconstitutional under *Apprendi v. New Jersey*, 530 U.S. 466 (2000). Defendant also alleged, as relevant here, that "[u]ndersigned counsel has obtained yet another statement — an Affidavit — from Holmes, who came to [postconviction] counsel's office on September 30, 2001." Defendant argued Holmes's statement undermined his trial testimony and "casts a shadow of doubt over the outcome of this trial." He argued the statement was an "additional reason for this Court to air all issues at an evidentiary hearing."

¶ 14 As an exhibit to the petition, defendant attached a transcript of a recorded conversation postconviction counsel had with Holmes in counsel's office on September 30, 2001. Defendant referred to this exhibit as the "Statement of Brian Holmes." Counsel acknowledged Holmes had not yet reviewed or affirmed in writing that the transcript was true and correct, but averred that,

until he could obtain Holmes's verification, counsel would verify he was present when Holmes gave the statement and the transcript attached to the petition was true and accurate.

¶ 15 In the transcript, Holmes told counsel that, on the night of the shooting, defendant was the driver of the car. Before the shooting, defendant never said, and no one said in defendant's presence, that they should shoot anyone. No one showed defendant a gun or told defendant that he had a gun. Although someone had come up to the car and said he had been shot at, this occurred outside the car and not in defendant's presence.

¶ 16 Holmes stated that, when the men were driving around Maywood on the night of the shooting, defendant was looking for his girlfriend. When defendant stated that, "I think that's them," he was referring to "some girls that he had seen on the street," not to "anyone who was shot." Holmes stated that defendant was "totally surprised" when "the other guy started shooting" and defendant "sort of just drove away because you know when somebody starts shooting at your car you get scared and you start driving." Holmes had not read over the statement he gave to the police and an assistant state's attorney after the shooting, and he signed it because he was scared. He acknowledged he had testified against defendant at trial, and stated no one had coerced or bribed him to give his statement to counsel.

¶ 17 The trial court dismissed defendant's petition and we affirmed that judgment on appeal. *People v. Blount*, No. 1-02-0234 (2002) (unpublished order under Illinois Supreme Court Rule 23).

¶ 18 In January 2015, defendant, through new private counsel, filed a motion for leave to file a successive postconviction petition. The court granted the motion. Defendant's successive postconviction petition raised three claims. He first argued that an attached affidavit by Holmes

recanting his trial testimony made clear that defendant was not accountable for murder and was actually innocent. Defendant next contended that postconviction counsel was "ineffective and negligent in not employing Holmes recantation in a timely and effective manner." Defendant asserted that Holmes's recantation was provided to postconviction counsel "some time ago" but counsel never "employed" it in his case to demonstrate his actual innocence. Defendant lastly claimed his 65-year sentence for offenses he committed when he was 17 years old was a *de facto* life sentence in violation of the eighth amendment to the United States constitution and unconstitutional under *Miller v. Alabama*, 567 U.S. 460 (2012).

¶ 19 In Holmes's notarized affidavit, signed and dated on October 16, 2014, he attested that he was coerced to testify at trial that, on July 9, 1997, defendant was present for a conversation with Brian Moore in which Moore stated he had been shot at. He was coerced to testify at trial that defendant knew that Holmes, Houston, and Blackwell went to get a gun that night to shoot at gang members. Holmes knew at trial that, on July 9, 1997, defendant drove to Maywood to visit the mother of his son and, when defendant said, "I think that's them," he was referring to her. No one ever told defendant on July 9, 1997, there was gun in the car or there was going to be a shooting that night. Holmes attested that, after the shooting, he signed what the police wanted him to sign because the police coerced him and he was scared.

¶ 20 Defendant also attached to his petition notarized affidavits from his father, Walter Blount II, and a friend, Tricia Ubidia. Defendant's father attested that, in September 2001, Holmes came to his house, apologized to him for lying at defendant's trial, and told him that he "could not live with this on his conscience." Ubidia attested that, in October 2014, Holmes told her that he remembered going to postconviction counsel's office and making a recantation statement in

2001, he remembered everything that happened on July 9, 1997, and he freely wrote, signed, and notarized a "recantation affidavit" on October 16, 2014. Defendant argued these affidavits corroborated Holmes's affidavit and explained the delay in presenting it.

¶ 21 In defendant's affidavit attached to the petition, he averred that, in September 2001, Holmes apologized to defendant's parents for lying about defendant. He attested that Holmes met with postconviction counsel on September 31, 2001, "[t]o take a recantation statement of what Mr. Holmes proclaim as true events that happened on July 9, 1997," and Holmes "freely and voluntarily made a recanted tape statement." Defendant attested that, in October 2001, postconviction counsel typed out Holmes's "tape recorded recantated [*sic*] statement" and Holmes signed, and counsel notarized, Holmes's affidavit. He averred that postconviction counsel told him that counsel would supplement Holmes's "recantated [*sic*] affidavit" to his original postconviction petition but defendant later learned that counsel did not do so.

¶ 22 The State filed a motion to dismiss defendant's successive postconviction petition. After a hearing, the trial court granted the motion. In its written order, the court found Holmes's recantation did not qualify as newly discovered evidence. It found the record rebutted the ineffective assistance of counsel claim as it showed that postconviction counsel attached a transcript of Holmes's recantation to the original postconviction petition and structured his arguments around Holmes's recantation. It further found that *Miller* did not provide defendant a basis for relief.

¶ 23 On appeal, defendant contends (1) Holmes's affidavit attached to his successive petition supports a claim of actual innocence, (2) postconviction counsel was ineffective because he did not "employ" Holmes's recantation statement in a "timely and effective manner," and (3) his 65-

year sentence for crimes he committed when he was 17 years old violates the eighth amendment to the United States constitution and is unconstitutional under *Miller*.

¶ 24 Under the Post-Conviction Hearing Act (Act), a defendant may attack a conviction by asserting that it resulted from a "substantial denial" of his constitutional rights. 725 ILCS 5/122-1 *et seq*. (West 2010); *People v. Tate*, 2012 IL 112214, ¶ 8. A postconviction proceeding is not a direct appeal from a conviction but is a collateral attack on the judgment. *Id.* The Act contemplates the filing of only one postconviction petition (*People v. Pitsonbarger*, 205 Ill. 2d 444, 456 (2002)) and successive postconviction petitions are disfavored (*People v. Jones*, 2017 IL App (1st) 123371, ¶ 41).

¶ 25 A defendant seeking to file a successive postconviction petition must first obtain leave of court. *People v. Edwards*, 2012 IL 111711, ¶ 24. To obtain leave of court, the petition must (1) state a colorable claim of actual innocence or (2) establish cause and prejudice. *People v. Jackson*, 2016 IL App (1st) 143025, ¶ 19. When, as here, the trial court grants a defendant leave to file a successive postconviction petition, the petition is effectively advanced to the second stage of postconviction proceedings. *Jackson*, 2016 IL App (1st) 143025, ¶ 20.

¶ 26 At the second stage, the State may file a motion to dismiss or answer the petition. *People v. Harper*, 2013 IL App (1st) 102181, ¶ 33. If the State files a motion to dismiss the petition, the trial court may hold a dismissal hearing and must determine whether the petition and accompanying documentation make a substantial showing of a constitutional violation. *Harper*, 2013 IL App (1st) 102181, ¶ 33. The court must take all well-pleaded facts that are not positively rebutted by the trial record as true (*People v. Pendleton*, 223 Ill. 2d 458, 473 (2006)) and the defendant bears the burden of making a substantial showing of a constitutional violation (*People*

v. Shaw, 2018 IL App (1st) 152994, ¶ 19. If the petition and accompanying documentation do not make such a showing, the trial court dismisses the petition at the second stage. *People v. Edwards*, 197 Ill. 2d 239, 246 (2001). We review the trial court's dismissal of a postconviction petition at the second stage *de novo*. *People v. Snow*, 2012 IL App (4th) 110415, ¶ 15.

¶ 27 Defendant first contends that Holmes's affidavit supports a claim of actual innocence. He asserts the affidavit is newly discovered evidence because the notarized affidavit did not exist until October of 2002, which was after he filed his original postconviction petition. He claims that Holmes's affidavit was never litigated or properly considered in any postconviction proceeding.

¶ 28 A defendant may assert a freestanding claim of actual innocence under the Act because a wrongful conviction of an innocent person violates due process under the Illinois Constitution. *Snow*, 2012 IL App (4th) 110415, ¶ 20. A claim of actual innocence is an assertion of total vindication or exoneration and not a challenge to whether the State proved defendant guilty beyond a reasonable doubt. *Shaw*, 2018 IL App (1st) 152994, ¶ 53. To establish a claim of actual innocence, defendant must show that the evidence in support of the claim is newly discovered, material and not merely cumulative, and of such conclusive character that it would probably change the result on retrial. *Id*. "Newly discovered" evidence means that it was unavailable at trial and the defendant could not have discovered it sooner through due diligence. *People v. Harris*, 206 Ill. 2d 293, 301 (2002). It is a defendant's burden to show no lack of due diligence on his part in discovering the evidence. *Snow*, 2012 IL App (4th) 110415, ¶ 21.

¶ 29 Defendant has not met his burden of demonstrating that Holmes's affidavit attached to the successive postconviction petition contains newly discovered evidence. If, as defendant

claims, he is actually innocent of any accountability for the shooting, he necessarily knew at the time of trial that Holmes's testimony implicating him in the shooting was not true. See *Harris*, 206 Ill. 2d at 301-02. Holmes's subsequent recantation of that testimony in the affidavit only corroborated what defendant already knew.

¶ 30 Further, when defendant filed his original postconviction petition in October 2001, he already knew Holmes had made similar statements contradicting and recanting his trial testimony. Defendant and his father stated in their affidavits attached to the successive petition that, in September 2001, Holmes apologized to defendant's father for lying at defendant's trial. Moreover, in his original postconviction petition, defendant expressly alleged that postconviction counsel had obtained a recantation affidavit from Holmes in September 2001, and attached a transcript of the 2001 conversation between postconviction counsel and Holmes labeled "Statement of Brian Holmes."

¶ 31 In that statement, as he did in the affidavit attached to defendant's successive petition, Holmes recanted and contradicted his testimony at trial. For example, Holmes stated that, on the night of the shooting, no one ever said in defendant's presence that they should shoot anyone, no one showed defendant a gun, defendant was driving around Maywood looking for his girlfriend, and defendant was "totally surprised" when "the other guy started shooting." Defendant in fact argued in the original postconviction petition that Holmes's statement undermined his trial testimony and was an "additional reason" for an evidentiary hearing. Accordingly, defendant not only knew when he filed his original postconviction petition in October 2001 that Holmes had made statements recanting his trial testimony, but presented that recantation in the petition.

Defendant therefore has not established that Holmes's affidavit attached to his successive petition is newly discovered evidence.

¶ 32 We reject defendant's contention that Holmes's affidavit is newly discovered evidence because it was notarized in October of 2002 and recertified in 2014, after postconviction counsel filed his original petition and the court dismissed it in 2001. The mere fact that Holmes's affidavit was notarized after defendant filed his original postconviction petition does not make the evidence contained in the affidavit newly discovered, where defendant clearly knew Holmes recanted his testimony in 2001 and argued this in his original postconviction petition. See *Harris*, 206 Ill. 2d at 301. Accordingly, because defendant has not established that the Holmes's affidavit is newly discovered evidence, defendant has failed to set forth a claim of actual innocence.

¶ 33 Defendant next contends that the affidavits attached to his successive petition show that postconviction counsel was "ineffective and negligent in not employing Holmes recantation in a timely and effective manner," *i.e.*, in the "proper fashion to support an actual innocence claim." Defendant claims that postconviction counsel did not structure his arguments around Holmes's recantation, as there was no mention of Holmes's affidavit during the original postconviction proceedings.

¶ 34 During postconviction proceedings, a defendant does not have a constitutional right to the assistance of postconviction counsel. *People v. Cotto*, 2016 IL 119006, ¶ 29. Rather, a defendant's right to assistance of counsel in postconviction proceedings is a matter of legislative grace and a defendant is guaranteed only the level of assistance provided by the Act. *Cotto*, 2016 IL 119006, ¶ 29. Our supreme court has found that, under the Act, defendant is entitled to a "reasonable" level of assistance from postconviction counsel (*Cotto*, 2016 IL 119006, ¶ 30),

which is less than that afforded by the federal or state constitutions (*Pendleton*, 223 Ill. 2d at 472). The standard applies to both retained and appointed counsel when a postconviction petition is advanced to the second stage. *Cotto*, 2016 IL 119006, ¶ 42.

¶ 35 We conclude that defendant's retained postconviction counsel provided a reasonable level of assistance of counsel. Postconviction counsel drafted a petition which raised detailed claims of ineffective assistance of trial counsel and appellate counsel. He also argued that Holmes gave a statement in his office in September 2001 which undermined Holmes's trial testimony implicating defendant. Counsel attached as an exhibit the transcript of the statement in which Holmes retracted his trial testimony. Postconviction counsel expressly argued that Holmes's statement "casts a shadow of doubt over the outcome of the trial" and was an "additional reason" for the court to hold an evidentiary hearing. Postconviction counsel also attached his own affidavit verifying that he was present when Holmes gave the statement and that it was true and accurate.

¶ 36 Given postconviction counsel's involvement in obtaining Holmes's recantation and that he expressly argued in the petition that it was an additional reason to advance the petition, we cannot find that postconviction counsel provided unreasonable assistance of counsel with respect to Holmes's affidavit and recantation. "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. Hotwagner*, 2015 IL App (5th) 130525, ¶ 35. The fact that counsel used the transcript rather than Holmes's notarized affidavit does not negate his efforts to present Holmes's recantation to the trial court and obtain an evidentiary hearing based

thereon. We find the record rebuts defendant's claim that postconviction counsel provided unreasonable assistance.

¶ 37 Defendant lastly contends that the trial court erred in dismissing his successive petition because his 65-year combined sentence for offenses he committed when he was 17 years old violates the eighth amendment to the United States constitution. He also asserts that his sentence violates *Miller v. Alabama*, 567 U.S. 460, 479 (2012), because it is a *de facto* life sentence and the trial court did not consider his age and youth when it sentenced him.

¶ 38 In *Miller v. Alabama*, 567 U.S. 460, 479 (2012), the United States Supreme Court held that a sentencing scheme that mandates life in prison without the possibility of parole for juvenile offenders is unconstitutional. In *Montgomery v. Louisiana*, 136 S. Ct. 718, 732 (2016), the United States Supreme Court concluded that the rule announced in *Miller* was retroactive. Subsequently, our supreme court concluded that, when a juvenile is sentenced to a mandatory term of years that is the functional equivalent of life without the possibility of parole, it is cruel and unusual punishment in violation of the eighth amendment and unconstitutional under *Miller*. *People v. Reyes*, 2016 IL 119271, ¶¶ 9-10 (concluding that a statutorily mandated sentence of 97 years in prison for the juvenile defendant who was 16 years old at the time he committed the offense was a *de facto* life sentence and unconstitutional).

¶ 39 Defendant has not met his burden of making a substantial showing that his sentence is unconstitutional, as the sentence is neither a mandatory life sentence nor a *de facto* life sentence. The circuit court sentenced defendant to a total of 65 years in prison: 45 years for first degree murder, which had a sentencing range of 20 to 60 years (730 ILCS 5/5-8-1(a)(1) (West 1996)), and 20 years for attempted murder, which had a sentencing range of 6 to 30 years (730 ILCS 5/5-

8-1(a)(3) (West 1996) (720 ILCS 5/8-4(c)(1) (West 1996)).[1] The court was required to order defendant to serve the sentences consecutively (730 ILCS 5/5-8-4(a) (West 1996)). However, the sentences for each offense were discretionary, rather than mandatory, fell within the sentencing ranges, and were not life sentences.

¶ 40 Nor was defendant's 65-year sentence a *de facto* life sentence. We note that under the laws in effect at the time of defendant's offense, his sentence is subject to day-for-day credit, which provides that defendant is required to serve less than 33 years of his 65 year sentence. 730 ILCS 5/3-6-3(a)(2) (West 1997); *People v. Reedy*, 186 Ill.2d 1, 17-18 (1999). The parties correctly agree that defendant was born in December 1980, his projected parole date is July 11, 2031, and his projected release date is July 11, 2034.[2] Thus, defendant will be paroled when he is 50 years old and released at age 53. Given that defendant will be released and complete his sentence in his early fifties, his sentence is objectively survivable and cannot be considered the functional equivalent of a *de facto* life sentence. See *People v. Rodriguez*, 2018 IL App (1st) 141379-B, ¶ 73 (finding 50-year sentence for a defendant who was 15 years old at the time of the offense and would be released at age 65 was not the functional equivalent of a *de facto* life sentence); *People v. Perez*, 2018 IL App (1st) 153629, ¶¶ 38, 46 (concluding 53-year sentence for a 17-year-old defendant, who would be released at 70 years old, was not a *de facto* life sentence).

[1] On the record before us, we cannot determine under which statutory provisions defendant was convicted. However, our decision on direct appeal sets forth the sentencing ranges on the offenses and we apply them here. *People v. Blount*, No. 1-99-2420 (2001) (unpublished order under Illinois Supreme Court Rule 23).

[2] The Illinois Department of Corrections website, of which we make take judicial notice, establishes these dates. See *People v. Buffer*, 2017 IL App (1st) 142931, ¶ 62; see https://www2.illinois.gov/idoc/Offender/Pages/InmateSearch.aspx.

¶ 41 Defendant asserts that his sentence violated *Miller* because the circuit court imposed it without considering his age and youth. See *Reyes*, 2016 IL 119271, ¶ 9 (Under *Miller*, "a juvenile may not be sentenced to a mandatory, unsurvivable prison term without first considering in mitigation his youth, immaturity, and potential for rehabilitation."). However, in this court's prior order affirming defendant's convictions and sentences on direct appeal, we found the circuit court considered defendant's age, lack of criminal history, and rehabilitative potential when it imposed defendant's sentences. *People v. Blount*, No. 1-99-2420 (2001) (unpublished order under Illinois Supreme Court Rule 23). In sum, because defendant was not sentenced to mandatory life in prison and his 65-year sentence, which he will complete in his early fifties, is not a *de facto* life sentence, he has not met his burden of making a substantial showing that his constitutional rights were violated at sentencing.

¶ 42 For the reasons explained above, we affirm the judgment of the circuit court dismissing defendant's successive postconviction petition.

¶ 43 Affirmed.