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2018 IL App (4th) 160058-U

NOS. 4-16-0058, 4-16-0273, 4-16-0281, 4-16-0282 cons.

IN THE APPELLATE COURT
 OF ILLINOIS

FOURTH DISTRICT

FILED
 September 24, 2018
 Carla Bender
 4th District Appellate
 Court, IL

| | | |
|--------------------------------------|---|-------------------------|
| THE PEOPLE OF THE STATE OF ILLINOIS, |) | Appeal from |
| Plaintiff-Appellee, |) | Circuit Court of |
| v. (No. 4-16-0058) |) | Champaign County |
| MICHAEL A. GLOVER, |) | No. 12CF1913 |
| Defendant-Appellant. |) | |
| |) | Honorable |
| |) | Thomas J. Difanis, |
| |) | Judge Presiding. |
| ----- |) | |
| THE PEOPLE OF THE STATE OF ILLINOIS, |) | Appeal from the |
| Plaintiff-Appellee, |) | Circuit Court of |
| v. (No. 4-16-0273) |) | Coles County |
| MICHAEL A. GLOVER, |) | No. 12CF236 |
| Defendant-Appellant. |) | |
| |) | |
| THE PEOPLE OF THE STATE OF ILLINOIS, |) | No. 12CF355 |
| Plaintiff-Appellee, |) | |
| v. (No. 4-16-0281) |) | |
| MICHAEL A. GLOVER, |) | |
| Defendant-Appellant. |) | |
| |) | |
| THE PEOPLE OF THE STATE OF ILLINOIS, |) | No. 12CF329 |
| Plaintiff-Appellee, |) | |
| v. (No. 4-16-0282) |) | Honorable |
| MICHAEL A. GLOVER, |) | Teresa Kessler Righter, |
| Defendant-Appellant. |) | Judge Presiding. |

JUSTICE HOLDER WHITE delivered the judgment of the court.
 Presiding Justice Harris and Justice Steigmann concurred in the judgment.

ORDER

¶ 1 *Held:* The appellate court affirmed, concluding the trial court properly (1) denied defendant’s motion for rehearing following the entry of an amended sentencing

order and (2) dismissed defendant's section 2-1401 petition without holding an evidentiary hearing.

¶ 2 In December 2013, defendant, Michael A. Glover, pleaded guilty to one count of unlawful possession of a stolen vehicle (Champaign County case No. 12-CF-1913), and the trial court sentenced him to a term of nine years' imprisonment. In May 2014, defendant pleaded guilty to (1) burglary (Coles County case No. 12-CF-236), (2) unlawful possession of a stolen vehicle (Coles County case No. 12-CF-329), and (3) burglary (Coles County case No. 12-CCF-355). The trial court sentenced defendant to a term of 10 years' imprisonment on each of the Coles County convictions to be served concurrently with each other but consecutively to defendant's sentence in the Champaign County case. This consolidated appeal involves defendant's (1) postconviction petition, filed in Champaign County, pursuant to the Post-Conviction Hearing Act (725 ILCS 5/122-1 *et seq.* (West 2014)) and (2) petition for relief from judgment, filed in Coles County, pursuant to section 2-1401 of the Code of Civil Procedure (735 ILCS 5/2-1401 (West 2014)). In Champaign County, defendant and the State stipulated to an amended sentencing order and defendant withdrew his postconviction petition. Defendant subsequently filed a "motion for rehearing," which the court denied. In Coles County, the State filed a motion to dismiss defendant's petition for relief from judgment, which the court granted.

¶ 3 Defendant appeals, asserting (1) the "motion for rehearing" filed in Champaign County should be construed as a motion to reinstate his withdrawn postconviction petition, necessitating remand for second-stage postconviction petition proceedings and (2) the Coles County trial court erred by dismissing his section 2-1401 petition for relief from judgment without holding an evidentiary hearing. For the following reasons, we affirm.

¶ 4 I. BACKGROUND

¶ 5 A. Champaign County Guilty Plea and Direct Appeal

¶ 6 In November 2012, the State in Champaign County charged defendant with nine felony offenses allegedly committed while he was out on bond from Coles County. In each count, the State alleged that any sentence imposed would be mandatorily consecutive to any sentences imposed in Coles County case Nos. 12-CF-236, 12-CF-329, and 12-CF-355. On December 23, 2013, defendant pleaded guilty to one count of unlawful possession of a stolen vehicle, a Class 2 felony (625 ILCS 5/4-103(a)(1), (b) (West 2010)). Defendant was eligible for extended term sentencing on the charge based on his 2008 conviction of a Class 2 felony. In exchange for defendant's guilty plea, the State agreed, in part, (1) to a 9-year term of imprisonment, followed by a 2-year term of mandatory supervised release, to be served consecutively to any sentence imposed in Coles County; (2) defendant was entitled to 399 days' credit for time served prior to his plea; and (3) to dismiss the other pending charges.

¶ 7 Prior to accepting defendant's guilty plea, the trial court asked defendant if anybody had promised him anything else, to which defendant responded, "No, your Honor." Pursuant to the negotiated plea deal, the court sentenced defendant to a term of 9 years' imprisonment, with credit for 399 days previously served in custody. Following the guilty plea hearing, defendant was transferred to the Coles County jail to await further proceedings on his pending charges in that county.

¶ 8 In January 2014, defendant filed a motion to withdraw his guilty plea. After this court twice remanded for strict compliance with Illinois Supreme Court Rule 604(d) (eff. Mar. 8, 2016), newly appointed counsel filed another motion to withdraw defendant's guilty plea. In August 2016, the court again denied defendant's motion to withdraw his guilty plea.

¶ 9 Defendant appealed, and this court, in part, affirmed the trial court's denial of his motion to withdraw his guilty plea. *People v. Glover*, 2017 IL App (4th) 160586, 85 N.E.3d 815.

¶ 10 B. Coles County Guilty Plea and Direct Appeal

¶ 11 In July 2012, the State charged defendant with burglary (Coles County case No. 12-CF-236) (720 ILCS 5/19-1(a) (West 2012)). In September 2012, the State charged defendant with unlawful possession of a stolen vehicle (Coles County case No. 12-CF-329) (625 ILCS 5/4-103(a)(1) (West 2012)). In October 2012, the State charged defendant with burglary (Coles County case No. 12-CF-355) (720 ILCS 5/19-1(a) (West 2012)).

¶ 12 On May 2, 2014, pursuant to a negotiated guilty plea, defendant pleaded guilty to all three charges. The negotiated plea provided for 10-year sentences on each charge to run concurrently with each other but consecutively to the 9-year sentence defendant received in Champaign County case No. 12-CF-1913. The plea provided for credit for time spent in presentence incarceration as follows: 60 days' credit in Coles County case No. 12-CF-236, 8 days' credit in Coles County case No. 12-CF-329, and 32 days' credit in Coles County case No. 12-CF-355.

¶ 13 During the course of proceedings on the negotiated guilty plea, the trial court found a factual basis for the pleas and asked defendant if any force or threat was used to induce his guilty pleas. Defendant responded, "No force or threat, just a promise." When asked what the promise was, defendant stated, "Of the 10-year sentence with 100 days credit just as early on I was promised a lighter sentence if I pled guilty in Champaign, which I did, but that deal was reneged on, so I'm going to see what happens today." Defendant explained his attorney contacted him while he was in the Champaign County jail and informed him the Coles County assistant State's Attorney would offer him a lighter sentence if he pleaded guilty in Champaign County case No. 12-CF-1913. According to defendant, the Coles County assistant State's

Attorney offered an 8-year sentence on the Coles County charges but “reneged on the deal” after defendant pleaded guilty in Champaign County case No. 12-CF-1913.

¶ 14 The State explained it initially offered defendant a 12-year sentence and engaged in numerous discussions with defendant’s counsel in both Coles and Champaign counties. At some point, the assistant State’s Attorney offered to consider a lighter sentence if defendant pleaded guilty in the Champaign County case. Following defendant’s plea in Champaign County, the State offered a lighter sentence, which defendant rejected. Regardless, the State noted the 10-year negotiated plea was lighter than the original offer of 12 years’ imprisonment.

¶ 15 After hearing these contentions, the trial court asked if defendant wanted the court to approve the plea agreement as stated. Defendant replied, “The 10 years, yes, sir. Yes, Your Honor.” The court approved the plea deal and sentenced defendant to concurrent 10-year terms of imprisonment to run consecutively to the sentence in the Champaign County case.

¶ 16 In May and June 2014, defendant filed *pro se* letters seeking (1) to withdraw his guilty pleas based on the State’s previous plea offer and (2) to obtain additional credit for time spent in custody prior to his pleas. In May 2015, defendant’s counsel asked the trial court to treat the letters as defendant’s motion to withdraw his pleas.

¶ 17 We set forth the specifics regarding the confusion over how much credit defendant was due for time spent in presentence incarceration on his Coles County charges in defendant’s direct appeal. *People v. Glover*, 2017 IL App (4th) 160716-U, ¶¶12-17 (*Glover II*). For the purposes of this appeal, it is sufficient to note the trial court determined defendant was entitled to a total of 100 days’ credit for nonoverlapping time spent in presentence incarceration on the Coles County charges. Defendant requested additional credit for time spent in Coles County jail following his guilty plea in Champaign County on December 23, 2013, through his

May 2, 2014, guilty plea in Coles County. The State asserted defendant was not entitled to additional credit for that time because he began serving his Champaign County sentence on December 23, 2013, regardless of where defendant was actually in custody (*i.e.* in Coles County jail rather than in the Department of Corrections (DOC)). In the docket entry, the court indicated its understanding that “[t]he time [defendant] served in Coles County Safety and Detention Center from [December 24, 2013] through [May 2, 2014] was time served pursuant to the sentence imposed in Champaign [County] [c]ase No. 12-CF-1913 [and] is part of [defendant’s] DOC sentence in that case.”

¶ 18 At the hearing on the motion to withdraw his guilty pleas, defendant again asserted the State “renewed” on an earlier 8-year plea offer. The trial court reviewed the transcript of the guilty plea hearing and noted a discussion regarding a prior offer that was never brought before the court. After the discussion, the court asked defendant if he wanted to proceed with the 10-year plea deal, and defendant agreed he wanted the 10-year deal. Based on the transcript, the court determined defendant was properly admonished as to the 10-year plea agreement and voluntarily pleaded guilty. Accordingly, the court denied defendant’s motion to withdraw his guilty pleas.

¶ 19 Defendant appealed, and this court, in part, affirmed the trial court’s denial of his motion to withdraw his guilty pleas. *Id.* ¶ 1.

¶ 20 C. Champaign County Postconviction Petition

¶ 21 In July 2015, defendant filed a *pro se* postconviction petition in Champaign County with a single allegation that DOC did not credit him with 399 days’ credit for time spent in presentence custody. In October 2015, appointed counsel filed an amended postconviction petition. The amended petition recounted the procedural history of defendant’s sentence credit in

both the Champaign County and the Coles County cases. The petition, which had supporting documentation from DOC, alleged defendant had, in fact, received 399 days' credit in Champaign County case No. 12-CF-1913. However, the petition further alleged defendant had not received the 100 days' credit from the Coles County negotiated plea.

¶ 22 In November 2015, the State filed a motion to extend the time to respond to defendant's amended petition, alleging "[t]he parties believe they will be able to resolve the issues in the Petition short of hearing, but are awaiting entry of an agreed order in Coles County vacating all sentence credits in that matter, so that they may all be addressed in a single order in Champaign County." On December 10, 2015, the Coles County circuit court issued an amended mittimus reflecting zero days' credit in each of the three Coles County cases. That same day, the trial court in Champaign County entered an agreed amended sentencing order and a written order memorializing the parties' agreement. According to the written order, the parties stipulated defendant was entitled to a total of 499 days' credit in the Coles County and Champaign County cases. The amended sentencing order for Champaign County case No. 12-CF-1913 provided for the total 499 days' credit. Defendant withdrew his amended postconviction petition upon the entry of the agreed order.

¶ 23 On December 23, 2015, defendant filed a *pro se* "motion for rehearing." In this motion, defendant claimed his postconviction petition sought an additional 143 days of credit for time served in Coles County from December 23, 2013, to May 14, 2014. The motion referenced the amended sentencing order reflecting the combined total of 499 days' credit and went on to allege "the court failed to address an unresolved issue from said postconviction in regards to a [*sic*] additional 143 jail credit days already served." On December 30, 2015, the trial court denied defendant's motion for rehearing. On January 19, 2016, defendant filed a notice of

appeal. On January 28, 2016, an amended notice of appeal was mailed and identified the orders appealed from as the ruling on the postconviction petition and the denial of the motion for rehearing.

¶ 24 D. Coles County Petition for Relief from Judgment

¶ 25 In January 2016, defendant filed a *pro se* petition for relief from judgment pursuant to section 2-1401 of the Code of Civil Procedure (735 ILCS 5/2-1401 (West 2014)). The petition alleged that, “[o]n Dec[ember] 12, 2013, this defendant entered into a plea agreement in Champaign County for the agreeded [*sic*] upon 9[-]year prison sentence in regard to another plea agreement within the Coles County judicial circuit for an agreed upon 8[-]year sentence.” Defendant alleged he only entered into the plea in Champaign County based on the 8-year plea offer in Coles County. Defendant’s affidavit stated that, during their last conversation in December 2013, he told his attorney he would accept the 8-year plea offer. Attached as an exhibit was an e-mail sent on October 24, 2013, from the Coles County assistant State’s Attorney to defendant’s counsel. In that e-mail, the assistant State’s Attorney offered defendant an 8-year plea deal in the Coles County cases if defendant pleaded guilty in Champaign County.

¶ 26 The State filed a motion to dismiss, conceding it did offer an 8-year plea deal contingent upon defendant pleading guilty in Champaign County. The State alleged that, on December 19, 2013, defendant tendered a counter-offer of 7 years, which inherently rejected the State’s offer of 8 years. The State further alleged that, on December 31, 2013, defendant again tendered a counter-offer of 7 years, affirming his rejection of the 8-year offer. Finally, the State alleged defendant was charged with a new offense in March 2014, which was a further rejection of any previous plea offer. The State attached copies of e-mails sent by defense counsel consistent with the allegations regarding counter-offers. Defendant attached a more complete

copy of the e-mails between the assistant State's Attorney and defense counsel as an exhibit to a *pro se* motion he filed in June 2015.

¶ 27 In March 2016, the trial court dismissed defendant's petition for relief from judgment. In its written order, the court noted "[t]he purpose of a 735 ILCS 5/2-1401 petition is to allow a defendant to present errors of fact, unknown to the petitioner or the court at the time of trial or plea[,] that would have caused the court to render a different decision. It is not to relitigate matters that could have been raised at trial or on appeal." The court found the issues raised in defendant's petition were matters that were known to defendant at the time he pleaded guilty and thus were not appropriate for a section 2-1401 petition.

¶ 28 This appeal followed. We have docketed the appeals as follows: Champaign County case No. 12-CF-1913 as No. 4-16-0058; Coles County case No. 12-CF-236 as No. 4-16-0273; Coles County case No. 12-CF-355 as No. 4-16-0281; and Coles County case No. 12-CF-329 as No. 4-16-0282. We have consolidated the cases for review.

¶ 29 **II. ANALYSIS**

¶ 30 On appeal, defendant asserts (1) the "motion for rehearing" filed in Champaign County should be construed as a motion to reinstate his withdrawn postconviction petition, necessitating remand for second-stage postconviction petition proceedings and (2) the Coles County trial court erred by dismissing his section 2-1401 petition for relief from judgment without holding an evidentiary hearing.

¶ 31 **A. Champaign County Postconviction Petition**

¶ 32 As an initial matter, we address a jurisdictional issue raised by the State. The State contends the parties reconstituted jurisdiction by stipulation in the Champaign County circuit court, which entered an amended sentencing order on December 10, 2015. That same date,

defendant withdrew his postconviction petition upon entry of the amended sentencing order. According to the State, defendant's December 23, 2015, "motion for rehearing" was a timely motion directed against the amended sentencing order seeking additional sentencing credit. On December 30, 2015, the court denied defendant's motion for rehearing, and defendant filed a notice of appeal on January 19, 2016, and an amended notice of appeal on January 28, 2016. The State asserts these notices of appeal were not timely with respect to the withdrawal of defendant's postconviction petition. Accordingly, the State contends this court has jurisdiction to review the amended sentencing judgment and the denial of the motion directed against that judgment. However, the State asserts this court does not have jurisdiction to review the withdrawal of defendant's postconviction petition.

¶ 33 Defendant asserts this court has jurisdiction to review the trial court's denial of what he now characterizes as a petition to reinstate his postconviction petition (the "motion for rehearing" filed on December 23, 2015) as well as the December 10, 2015, amended sentencing order, which defendant now characterizes as a "resolution" to the postconviction petition.

¶ 34 Initially, we note defendant filed a timely postconviction petition and counsel properly filed an amended postconviction petition. The State does not contest the trial court's jurisdiction over defendant's postconviction petition. Based on the parties' stipulation, on December 10, 2015, the court entered an agreed amended sentencing order, which consolidated defendant's presentence incarceration credit from both Coles County and Champaign County for a total of 499 days. Generally, a court loses jurisdiction "at the end of the 30-day window following the entry of a final judgment" unless a timely postjudgment motion is filed. *People v. Bailey*, 2014 IL 115459, ¶ 8, 4 N.E.3d 474. Defendant's motion for rehearing was a timely postjudgment motion, and defendant filed his notice of appeal within 30 days of the denial of his

postjudgment motion. Accordingly, we conclude the notices of appeal filed in this case vested this court with jurisdiction over the December 10, 2015, amended sentencing order which included withdrawal of the postconviction petition, as well as the order denying defendant's motion for rehearing entered on December 30, 2015.

¶ 35 Next, we turn to defendant's contention that the "motion for rehearing" filed in Champaign County should be construed as a motion to reinstate his withdrawn postconviction petition, necessitating remand for second-stage postconviction petition proceedings.

¶ 36 We disagree with defendant's characterization of the "motion for rehearing" as a petition to reinstate his postconviction petition. Nothing in the motion for rehearing suggests the defendant sought to reinstate his postconviction petition. The *only* request for relief in the motion for rehearing was for an additional 143 days' credit for time served after his Champaign County guilty plea and before his Coles County guilty plea. Even construed liberally, the petition clearly does not in any way seek reinstatement of his postconviction petition. Indeed, even if the motion for rehearing could reasonably be construed as a petition to reinstate the original or amended postconviction petition, neither of those petitions requested the relief he sought in the motion for rehearing—namely, an additional 143 days credit.

¶ 37 As to the merits of the amended sentencing order and the trial court's denial of defendant's motion for rehearing, we affirm the court's judgment. Defendant was entitled to a total of 499 days' credit for nonoverlapping time served prior to his guilty pleas in the Champaign County case and the Coles County cases. The record shows defendant previously sought additional credit for the time he spent in Coles County jail following his guilty plea in Champaign County. Our review of the record shows defendant began serving the sentence imposed in Champaign County case No. 12-CF-1913 following his December 23, 2013, guilty

plea. Although he was in custody in Coles County from December 24, 2013, to May 2, 2014, he is not entitled to double credit for that time as he was already serving his Champaign County sentence, regardless of *where* he was during that time (*i.e.*, in Coles County jail versus DOC). Accordingly, the amended sentencing order properly credited defendant with 499 days of credit for time previously served, and the court properly denied his motion for rehearing because defendant was not entitled to additional credit for time spent in Coles County jail following his guilty plea in Champaign County. Accordingly, we affirm the trial court’s judgment.

¶ 38 B. Coles County Section 2-1401 Petition

¶ 39 Defendant next contends the Coles County circuit court erred by granting “summary judgment” on his section 2-1401 petition without holding an evidentiary hearing after the State answered his petition on the merits and raised factual disputes. We note the State filed a motion to dismiss, conceding the State offered defendant an 8-year plea offer, but asserting defendant twice rejected that offer by making counteroffers. Accordingly, the State asserted there was no issue of fact and the petition should be dismissed. The trial court dismissed the section 2-1401 petition, noting all matters raised therein would have been known by defendant at the time he pleaded guilty and were not appropriately raised in a section 2-1401 petition.

¶ 40 “To obtain relief under section 2-1401, the defendant ‘must affirmatively set forth specific factual allegations supporting each of the following elements: (1) the existence of a meritorious defense or claim; (2) due diligence in presenting this defense or claim to the circuit court in the original action; and (3) due diligence in filing the section 2-1401 petition for relief.’ ” *People v. Pinkonsly*, 207 Ill. 2d 555, 565, 802 N.E.2d 236, 243 (2003) (quoting *Smith v. Airoom, Inc.*, 114 Ill. 2d 209, 220-21, 499 N.E.2d 1381, 1386 (1986)). To assert a meritorious defense under section 2-1401, a defendant must show errors of fact, not errors of law. *Id.*

“A section 2-1401 petition for relief from a final judgment is the forum in a criminal case in which to correct all errors of fact occurring in the prosecution of a cause, unknown to the petitioner and court at the time judgment was entered, which, if then known, would have prevented its rendition. [Citations.] A section 2-1401 petition, however, ‘is not designed to provide a general review of all trial errors nor to substitute for direct appeal.’ ” *People v. Haynes*, 192 Ill. 2d 437, 461, 737 N.E.2d 169, 182 (2000) (quoting *People v. Berland*, 74 Ill. 2d 286, 314, 385 N.E.2d 649, 662 (1978)).

Indeed, a defendant may not rely on points previously raised at trial or other collateral proceedings to form the basis for relief in a section 2-1401 petition. *Id.*

¶ 41 We conclude defendant has failed to raise specific factual matters, unknown to him and the trial court at the time his guilty plea was entered that if then known, would have prevented the entry of the guilty plea—*i.e.* a meritorious defense or claim. *Id.* Defendant asserts he has raised facts unknown to the trial court at the time of trial that would have prevented entry of the judgment in the form of an e-mail from the Coles County assistant State’s Attorney offering an 8-year plea deal predicated on defendant pleading guilty in Champaign County. Defendant’s accompanying affidavit stated, “on our last conversation in December 2013 I told [defense counsel] I would accept that plea of 8 years by Coles County.”

¶ 42 The record shows these factual matters were not unknown at the time of defendant’s guilty plea. Defendant raised the issue of a lighter plea offer during the guilty-plea hearing, but at no time did defendant assert he had instructed his attorney he wished to accept the

8-year offer. The trial court inquired into the terms of prior plea offers and listened to the representations made by both defendant and the assistant State's Attorney. After hearing these contentions, the court asked defendant if he wished to plead guilty to the 10-year plea offer as stated, and defendant responded, "The 10 years, yes, sir." The court thereafter determined defendant understood his rights and knowingly and voluntarily pleaded guilty to each of the three charges. *People v. Townsell*, 209 Ill. 2d 543, 545, 809 N.E.2d 103, 104 (2004) ("It is well established that a voluntary guilty plea waives all nonjurisdictional errors or irregularities, including constitutional ones."). The record establishes defendant acquiesced in accepting the terms of the State's 10-year plea offer. See *People v. Mujica*, 2016 IL App (2d) 140435, ¶ 19, 55 N.E.3d 59 (defendant acquiesced in advancing the case to trial where he never expressed a desire to accept the State's plea offer). Accordingly, we conclude defendant has failed to set forth a meritorious claim or defense entitling him to relief from judgment.

¶ 43 Even if we were to conclude defendant was not bound by his acquiescence, we conclude his section 2-1401 petition for relief from judgment is insufficient as a matter of law. Proceedings on section 2-1401 petitions are subject to the rules of civil practice. *People v. Vincent*, 226 Ill. 2d 1, 8, 871 N.E.2d 17, 23 (2007). "Section 2-1401 petitions are essentially complaints inviting responsive pleadings" and may be dismissed for lack of factual or legal sufficiency. *Id.* If the alleged facts in a section 2-1401 petition cannot state a legal basis for relief, the petition may be challenged at any time, including on appeal. *Id.* at 8-9. If all well-pleaded facts are taken as true, "the trial court may decide the case on the pleadings, affidavits, exhibits[,] and supporting material before it, including the record of the prior proceedings." *Id.* at 9.

¶ 44 As noted above, defendant contends he raised new factual matter in the form of an e-mail from the Coles County assistant State's Attorney offering an 8-year plea deal and his affidavit contending he informed his attorney he wanted to accept the 8-year offer. Defendant further asserts that the State's motion to dismiss, which included documentation and an affidavit that established defendant rejected the 8-year offer by making a counteroffer, raised a genuine issue of material fact as to whether defendant accepted the 8-year plea offer. Accordingly, defendant argues this court should remand for an evidentiary hearing on his section 2-1401 petition.

¶ 45 In support of this argument, defendant points to the more complete set of e-mails filed with defendant's amended postconviction petition in Champaign County to bolster his contention that a genuine issue of material fact exists as to whether counsel presented the 8-year offer to defendant or whether defendant accepted that plea offer. We note defendant made this more complete set of e-mails a matter of record in Coles County by attaching them as an exhibit to a *pro se* motion filed in June 2015. The record in this regard directly contradicts defendant's section 2-1401 petition allegation that he accepted the 8-year plea offer set forth in the assistant State's Attorney's October 24, 2013, e-mail. The e-mails do show that on October 24, 2013, the assistant State's Attorney offered an 8-year plea deal. However, there is an e-mail defense counsel sent to the assistant State's attorney on November 13, 2013, which reads, in part, "Just talked to Glover. Wisconsin DOC has a hold on him now. What about 6 [DOC]?" Even if defendant did inform his counsel he wished to accept the 8-year offer in their last conversation in December 2013, the record clearly shows defendant rejected the 8-year offer at least three times. As noted above, the court may take into account the record of prior proceedings in evaluating the legal sufficiency of a section 2-1401 petition. *Id.* Here, the record directly contradicts

defendant's claim that he accepted the 8-year plea offer. Accordingly, he has failed to state a legal basis for the requested relief.

¶ 46

III. CONCLUSION

¶ 47

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

¶ 48

Affirmed.