

**NOTICE**

This order was filed under Supreme Court Rule 23 and may not be cited as precedent by any party except in the limited circumstances allowed under Rule 23(e)(1).

2019 IL App (4th) 170438-U

NO. 4-17-0438

IN THE APPELLATE COURT

OF ILLINOIS

FOURTH DISTRICT

**FILED**

June 17, 2019  
Carla Bender  
4<sup>th</sup> District Appellate  
Court, IL

THE PEOPLE OF THE STATE OF ILLINOIS,	)	Appeal from the
Plaintiff-Appellee,	)	Circuit Court of
v.	)	Mason County
TIMOTHY A. JONES,	)	No. 15CF107
Defendant-Appellant.	)	
	)	The Honorable
	)	Alan D. Tucker,
	)	Judge Presiding.

JUSTICE STEIGMANN delivered the judgment of the court.  
Justices DeArmond and Cavanagh concurred in the judgment.

**ORDER**

¶ 1 *Held:* The appellate court affirmed the trial court’s summary dismissal of defendant’s postconviction petition.

¶ 2 In December 2015, defendant pleaded guilty to participating in the manufacture of 220.6 grams of methamphetamine. 720 ILCS 646/15(a)(1) (West 2014). In March 2017, defendant *pro se* filed a postconviction petition in which he argued that his attorney was ineffective because the State could only prove that he participated in the manufacture of 33 grams of methamphetamine. In May 2017, the trial court summarily dismissed defendant’s petition at the first stage. Defendant appeals, arguing that the trial court erred by summarily dismissing his petition.

We affirm.

¶ 3 I. BACKGROUND

¶ 4 A. Defendant’s Arrest

¶ 5 On July 17, 2015, Detective David Baker of the Mason County Sheriff’s Department and another police officer arrested defendant for suspected methamphetamine manufacturing. Shortly thereafter, Baker wrote a “statement of probable cause” in which he stated that the “State Police Methamphetamine Response Team arrived [at defendant’s residence] and weighed the liquid in the 1 liter bottle with the weight results being 220.6 grams of a substance that field tested positive for containing methamphetamine.”

¶ 6 B. The Charges

¶ 7 On July 22, 2015, the State charged defendant with participation in methamphetamine manufacturing. *Id.* Specifically, the State alleged that “defendant knowingly participated in the manufacture of methamphetamine with the intent that a substance containing methamphetamine be produced and thereby produced 220.6 grams of a substance containing methamphetamine \*\*\*.”

¶ 8 C. The Laboratory Report

¶ 9 In August 2015, Denise Hanley, a forensic scientist with the Illinois State Police, issued a laboratory report. The report stated Baker submitted “32.5 grams of [a] pink substance” and “0.5 gram[s] of tan chunks” that tested positive for methamphetamine.

¶ 10 D. The Guilty Plea

¶ 11 In December 2015, defendant entered into a fully negotiated plea agreement. The trial court requested a factual basis and the prosecutor stated as follows:

“[T]he State would call Mason County Sheriff’s Detective David Baker, who would testify that on July 17, 2015, \*\*\* he met with the defendant in his home[.] \*\*\* [D]uring the meeting, the defendant \*\*\* admitted \*\*\* that he’d been manufacturing methamphetamine for the last month[.] \*\*\* [V]arious metham-

phetamine manufacturing materials were \*\*\* found in the bedroom of the defendant's home, including an HCL generator, sulfuric acid, pill bottles, tubing, [and] a one liter bottle of methamphetamine solution.

The solution was sampled and weighed 220.6 grams and tested positive for containing methamphetamine. Forensic scientist for the Illinois State Police state lab Denise Hanley would testify that she was the one that tested the sample taken from the bottle and that it did test positive for methamphetamine.”

¶ 12 Defense counsel stated that she had reviewed the discovery with her client and she believed the State would present this evidence at trial. Defendant concurred with his attorney's representations. The trial court found that a factual basis existed for the plea agreement. Pursuant to the agreement, the court sentenced defendant to nine years in prison—which was the minimum sentence. See *id.* § 15(a)(2)(C) (“A person who participates in the manufacture of 100 or more grams but less than 400 grams of methamphetamine \*\*\* is \*\*\* subject to a term of imprisonment of not less than 9 years and not more than 40 years \*\*\*.”). Defendant did not appeal his conviction.

¶ 13 E. Defendant's Postconviction Petition

¶ 14 In March 2017, defendant *pro se* filed a postconviction petition in which he argued that his attorney “failed to challenge or investigate the weight of the controlled substance” and improperly “stipulated to 220.6 grams of a substance containing methamphetamine.” Defendant argued that Baker improperly weighed the methamphetamine by weighing the entire bottle instead of only weighing the contents inside the bottle. In support of his petition, defendant attached Hanley's report indicating that only 33 grams tested positive for methamphetamine. To this point, defendant argued as follows:

“[Defendant] contends that \*\*\* ‘methamphetamine cases’ in the State of Illinois have \*\*\* three weights determined. In that the full weight [of the container] is determined, then the empty weight [of the container], then the weight of the actual substance [inside of the container] which allegedly contains methamphetamine or the legally chargeable amount. \*\*\* When a tractor/trailer is found with 33 grams of methamphetamine inside it[,] the owner/driver is charged with 33 grams not the 80,000 lbs the truck weighs. Thus the [defendant] should only be charged with the 33 grams not the 220.6 grams.”

¶ 15 Accordingly, defendant argued that the State could only prove that he manufactured 33 grams of methamphetamine. As a result, defendant argued that he received a longer prison sentence because of counsel’s deficient performance. See *id.* § 15(a)(2)(B) (“A person who participates in the manufacture of 15 or more grams but less than 100 grams of methamphetamine \*\*\* is \*\*\* subject to a term of imprisonment of not less than 6 years and not more than 30 years \*\*\*.”).

¶ 16 F. The Trial Court’s Ruling

¶ 17 In May 2017, the trial court summarily dismissed defendant’s petition at the first stage. The court reasoned that defendant’s claims were refuted by the record.

¶ 18 This appeal followed.

¶ 19 II. ANALYSIS

¶ 20 Defendant appeals, arguing that the trial court erred by summarily dismissing his petition at the first stage. We affirm.

¶ 21 A. The Applicable Law

¶ 22 The Post-Conviction Hearing Act (Act) provides a criminal defendant the means

to redress substantial violations of his constitutional rights that occurred in his original trial or sentencing. *People v. Crenshaw*, 2015 IL App (4th) 131035, ¶ 23, 38 N.E.3d 1256; 725 ILCS 5/122-1 (West 2016). The Act contains a three-stage procedure for relief. *People v. Allen*, 2015 IL 113135, ¶ 21, 32 N.E.3d 615; 725 ILCS 5/122-2.1 (West 2016).

¶ 23 At the first stage, the trial court must independently review the petition and determine whether it is frivolous or patently without merit. *People v. Clark*, 2011 IL App (2d) 100188, ¶ 15, 957 N.E.2d 162. “To be summarily dismissed at the first stage as frivolous or patently without merit, the petition must have no arguable basis either in law or in fact, relying instead upon ‘an indisputably meritless legal theory or a fanciful factual allegation.’” *People v. Boykins*, 2017 IL 121365, ¶ 9, 93 N.E.3d 504 (quoting *People v. Hodges*, 234 Ill. 2d 1, 16-17, 912 N.E.2d 1204, 1212 (2009)). “Meritless legal theories include those theories that are completely contradicted by the record.” *Boykins*, 2017 IL 121365, ¶ 9.

¶ 24 A defendant has the right to effective assistance of counsel at all critical stages of a criminal proceeding. See U.S. Const., amend. VI; *People v. Sturgeon*, 2019 IL App (4th) 170035, ¶ 81, \_ N.E.3d \_. “At the first stage of postconviction proceedings under the Act, a petition alleging ineffective assistance may not be summarily dismissed if ([1]) it is arguable that counsel’s performance fell below an objective standard of reasonableness and ([2]) it is arguable that the defendant was prejudiced.” *Hodges*, 234 Ill. 2d at 17. An attorney’s performance is deficient when it falls below an objective standard of reasonableness. *People v. Westfall*, 2018 IL App (4th) 150997, ¶ 62, 115 N.E.3d 1148. This court is highly deferential of counsel’s performance. *People v. McGath*, 2017 IL App (4th) 150608, ¶ 38, 83 N.E.3d 671. A defendant is prejudiced when but for counsel’s errors, there is a reasonable probability that the result of the proceeding would have been different. *Westfall*, 2018 IL App (4th) 150997, ¶ 63. A defendant’s

failure to satisfy either prong negates a claim of ineffective assistance of counsel. *People v. Fellers*, 2016 IL App (4th) 140486, ¶ 23, 77 N.E.3d 994.

¶ 25 The trial court’s dismissal of a postconviction petition at the first stage is reviewed *de novo*. *Boykins*, 2017 IL 121365, ¶ 9. Likewise, claims of ineffective assistance of counsel are reviewed *de novo*. *Westfall*, 2018 IL App (4th) 150997, ¶ 64.

¶ 26 B. This Case

¶ 27 In his postconviction petition, defendant argued that Baker improperly weighed the methamphetamine by weighing the entire bottle instead of only weighing the contents inside the bottle. He further argued that his attorney was ineffective for failing to challenge the weight of the methamphetamine. In support of this claim, defendant attached Hanley’s report that stated that only 33 grams tested positive for methamphetamine. On appeal, defendant argues that “whether the bottle was, in fact, weighed with this substance \*\*\* cannot be established by the record.” We affirm.

¶ 28 Baker’s report indicated that he “weighed the liquid *in the* 1 liter bottle with the weight results being 220.6 grams of a substance that field tested positive for containing methamphetamine.” (Emphasis added.) Baker’s report strongly suggests he weighed the contents of the bottle rather than the bottle itself. Further, the prosecutor stated that this “solution was sampled and weighed 220.6 grams and tested positive for containing methamphetamine. Forensic scientist for the Illinois State Police state lab Denise Hanley would testify that she was the one that tested the sample taken from the bottle and that it did test positive for methamphetamine.” Hanley’s report stated that Baker submitted “32.5 grams of [a] pink substance” and “0.5 gram[s] of tan chunks” that tested positive for methamphetamine. Defense counsel also stated that she reviewed the discovery and that she believed the State could present this evidence at trial. Defendant con-

curred with this representation. Accordingly, we conclude that defendant's claims are refuted by the record and affirm the trial court's summary dismissal of defendant's postconviction petition.

¶ 29

### III. CONCLUSION

¶ 30 For reasons stated, we affirm the trial court's order. We also grant the State its \$50 statutory assessment against defendant as the costs of this appeal. 55 ILCS 5/4-2002 (West 2016).

¶ 31 Affirmed.