

NOTICE
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2019 IL App (4th) 180186-U

NO. 4-18-0186

IN THE APPELLATE COURT

OF ILLINOIS

FOURTH DISTRICT

FILED
February 1, 2019
Carla Bender
4th District Appellate
Court, IL

THE PEOPLE OF THE STATE OF ILLINOIS,)	Appeal from the
Plaintiff-Appellee,)	Circuit Court of
v.)	Schuyler County
JARED M. STAAKE,)	No. 13CF29
Defendant-Appellant.)	
)	The Honorable
)	Scott J. Butler,
)	Judge Presiding.

JUSTICE STEIGMANN delivered the judgment of the court.
Presiding Justice Holder White and Justice DeArmond concurred in the judgment.

ORDER

- ¶ 1 *Held:* The appellate court reversed the trial court’s first-stage dismissal of defendant’s postconviction petition because it stated the gist of a *Brady* claim.
- ¶ 2 In January 2014, a jury found defendant, Jared M. Staake, guilty of second degree murder (720 ILCS 5/9-2(a)(1) (West 2012)) for the killing of Michael Box. The trial court later sentenced him to 18 years in prison. On direct appeal, this court affirmed defendant’s conviction (*People v. Staake*, 2016 IL App (4th) 140638, 78 N.E.3d 388 (*Staake I*)), and the supreme court affirmed this court’s decision (*People v. Staake*, 2017 IL 121755, 102 N.E.3d 217 (*Staake II*)).
- ¶ 3 In December 2017, defendant filed an amended postconviction petition raising eight different claims, including that his appellate counsel was ineffective for failing to assert a *Brady* violation against the State. See *Brady v. Maryland*, 373 U.S. 83 (1963) (holding due process requires the State to disclose to defendants certain favorable evidence). Specifically, defendant alleged the State failed to correct the testimony of a witness who falsely denied having a

prior conviction for aggravated battery and failed to provide defense counsel with a copy of the witness's conviction in a timely manner. In March 2018, the trial court entered a written order dismissing defendant's petition because it was frivolous and patently without merit.

¶ 4 Defendant appeals, arguing—among other things—that the trial court erred by dismissing his postconviction petition because he stated the gist of a constitutional claim that the State committed a *Brady* violation. We agree and remand the case for second-stage proceedings.

¶ 5 I. BACKGROUND

¶ 6 The background of this case is set out in great detail in both *Staake I* and *Staake II*. Accordingly, we repeat only what is necessary to address the issue before us on appeal.

¶ 7 A. The Charges and Pretrial Discovery

¶ 8 In July 2013, the State charged defendant with second degree murder (720 ILCS 5/9-2(a)(1) (West 2012)). In October 2013, defendant disclosed that he intended to assert the affirmative defense of self-defense if the cause proceeded to trial. The trial court scheduled a January 13, 2014, trial date.

¶ 9 In November 2013, defendant requested discovery including the criminal records of any potential State witness for impeachment purposes. On January 10, 2013, the State provided to defendant a Law Enforcement Agency Data System (LEADS) report pertaining to Brandon Hodge, a witness to the alleged murder, that set forth Hodge's criminal history.

¶ 10 B. The Trial

¶ 11 Casey Slusser testified that she was employed managing carnival games for a traveling carnival. Slusser and Michael Box shared a trailer that contained two separate, adjacent living quarters. Slusser explained that one night, she, Box, other carnival employees, and defendant drank and played "beer pong." After playing, defendant went with Slusser to her room. Two

or three minutes later, Box began yelling and banging on Slusser's door. Defendant opened the door and exited the trailer, at which point Box punched him in the face. Defendant took a couple steps backward, pulled out a pocket knife, and then stabbed Box in the left abdomen before running off. Slusser took Box to the hospital. Two days later, when Slusser checked on Box in his trailer, she found him lying dead on the floor.

¶ 12 Dr. Mark Day testified that he treated Box for a small stab wound on the night in question. Day stated that Box appeared intoxicated and on multiple occasions Box attempted to hit him, causing Day to leave the room before he could observe or treat the wound. Eventually, Day was able to stitch up the wound. Box left the hospital against Day's advice and without further treatment.

¶ 13 Brandon Hodge testified that he also worked at the carnival and that he stayed in a trailer not far from Box's and Slusser's trailer. Hodge explained that he could see their trailer from his doorway. On the night of the stabbing, Hodge drank with Slusser, defendant, and Box. After returning to his trailer, he heard Box banging on Slusser's door. Hodge sat on the step of his trailer and watched as defendant opened the door. According to Hodge, Box "sucker punched" defendant and then took three or four steps back. Defendant then reached into Slusser's trailer, grabbed a knife, and stabbed Box.

¶ 14 On cross-examination, Hodge admitted he had a conviction for felony burglary. Defense counsel asked if Hodge had been convicted of aggravated battery, and Hodge replied, "No sir, never been charged with that charge." The State requested a sidebar. The State explained that it believed defense counsel was going to attempt to improperly impeach Hodge without having a certified copy of the conviction. Defense counsel produced the LEADS report provided by the State. The trial court agreed with the State that impeachment with a LEADS report was im-

proper and a certified copy of the conviction was required. The court instructed the jury that “there is no official record that the [witness] has ever been convicted of aggravated battery” and “counsel[is] not prepared to provide anything to us today that shows that the witness has been convicted of aggravated battery.”

¶ 15 Dr. Amanda Youmans testified that she performed the autopsy of Box and opined that he died from septic shock due to acute peritonitis resulting from a stab wound to the stomach. (In layman’s terms, the stab wound to the stomach caused its contents to leak into the body, which led to an infection and inflammation, eventually resulting in death.)

¶ 16 Defendant testified in his own defense. Defendant averred that after he was punched, Box advanced towards him, causing him to fear for his life. Defendant also stated that he had previously seen Box knock a man out in a bar fight, which contributed to his fear. Defendant insisted he stabbed Box in self-defense.

¶ 17 The jury found defendant guilty of second degree murder, and the trial court sentenced defendant to 18 years in prison.

¶ 18 C. The Direct Appeal

¶ 19 On direct appeal, defendant argued, among other things, that the charging instrument was improperly amended from first degree murder to second degree murder at the close of evidence and that the trial court erred by excluding (1) evidence that Box caused his own death by refusing life-saving medical treatment and (2) witness testimony that corroborated defendant’s claim that Box was the first aggressor due to his violent history. *Staake I*, 2016 IL App (4th) 140638, ¶ 43. This court rejected defendant’s arguments and affirmed his conviction. *Id.*

¶ 109. The Illinois Supreme Court affirmed this court’s decision. *Staake II*, 2017 IL 121755, ¶ 1.

¶ 20 D. The Postconviction Petition

¶ 21 In October 2017, defendant filed a petition for postconviction relief pursuant to the Post-Conviction Hearing Act (Act) (725 ILCS 5/122-1 *et seq.* (West 2016)). In December 2017, defendant filed an amended postconviction petition, raising eight claims of ineffective assistance of counsel. Relevant to this appeal, defendant claimed that the State committed a *Brady* violation when it failed to correct Hodge’s testimony that he had never been charged or convicted of aggravated battery. Defendant contended that the State’s objection to his attempt to impeach Hodge was therefore improper. Alternatively, defendant argued that the State should have provided him with a certified copy of the conviction so Hodge could have been properly impeached. Defendant claimed he received ineffective assistance of counsel on appeal because the *Brady* issue was not raised on direct appeal. In support of his claim, defendant attached a report from the Illinois State Police Bureau of Identification which showed Hodge had been in prison for aggravated battery.

¶ 22 In March 2018, the trial court summarily dismissed defendant’s petition, finding it was frivolous and patently without merit. Regarding the *Brady* claim, the court concluded defendant was not prejudiced by any potential violation because Hodge admitted he had a felony burglary conviction, which involved dishonesty, while aggravated battery did not.

¶ 23 This appeal followed.

¶ 24 II. ANALYSIS

¶ 25 Defendant appeals, arguing—among other things—that the trial court erred by dismissing his postconviction petition because he stated the gist of a constitutional claim that the State committed a *Brady* violation. We agree and remand the case for second-stage proceedings. Because we agree that remand is necessary on the *Brady* claim, we need not consider whether any of defendant’s other claims also state the gist of a constitutional claim. See *People v. Rivera*,

198 Ill. 2d 364, 371, 763 N.E.2d 306, 310 (2001) (holding the Act does not provide for the dismissal of individual claims and required the entire petition to be docketed if it is not frivolous or patently without merit).

¶ 26 A. The Standard of Review and Applicable Law

¶ 27 The 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). A proceeding under the Act is collateral and not an appeal from the defendant’s conviction and sentence. *Crenshaw*, 2015 IL App (4th) 131035, ¶ 23.

¶ 28 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). Within the first 90 days after the petition is filed and docketed, the trial court shall dismiss a petition summarily if the court determines it is “frivolous or is patently without merit.” 725 ILCS 5/122-2.1(a)(2) (West 2016). A petition may be dismissed as frivolous or patently without merit only if the petition has no arguable basis either in law or in fact. *Allen*, 2015 IL 113135, ¶ 25. The trial court considers “the petition’s substantive virtue rather than its procedural compliance.” *People v. Hommerson*, 2014 IL 115638, ¶ 11, 4 N.E.3d 58.

¶ 29 Because most postconviction petitions are drafted by *pro se* defendants, “the threshold for a petition to survive the first stage of review is low.” *Allen*, 2015 IL 113135, ¶ 24. If a petition alleges sufficient facts to state the gist of a constitutional claim, first-stage dismissal is inappropriate. *Id.* If the petition is not dismissed as being frivolous or patently without merit, then the trial court orders the petition to be docketed for further consideration. 725 ILCS 5/122-2.1(b) (West 2016). When the trial court dismisses a petition at the first stage, its ruling is re-

viewed *de novo*. *People v. Bowens*, 2013 IL App (4th) 120860, ¶ 11, 1 N.E.3d 638.

¶ 30 In order to prevail on a claim of ineffective assistance of counsel, a defendant must show that (1) counsel’s performance fell “below an objective standard of reasonableness” and (2) the deficient performance prejudiced the defendant. *Strickland v. Washington*, 466 U.S. 668, 687-88 (1984). However, at the first stage of postconviction proceedings, “a petition alleging ineffective assistance may not be summarily dismissed if (i) it is *arguable* that counsel’s performance fell below an objective standard of reasonableness and (ii) it is *arguable* that the defendant was prejudiced.” (Emphases added.) *People v. Hodges*, 234 Ill. 2d 1, 17, 912 N.E.2d 1204, 1212 (2009). This standard applies equally when a defendant’s claim is based on counsel’s failure to raise a particular issue on appeal. *Id.*

¶ 31 A postconviction proceeding is a collateral attack on a final judgment. *People v. English*, 2013 IL 112890, ¶ 21, 987 N.E.2d 371. The extent of review is therefore limited to issues that have not been, and could not have been, previously adjudicated. *Id.* ¶ 22. However, the doctrine of forfeiture does not apply if the alleged forfeiture “stems from incompetency of appellate counsel in failing to raise the issue on appeal.” *People v. Simms*, 192 Ill. 2d 348, 361, 736 N.E.2d 1092, 1106 (2000). Defendant contends his appellate counsel was ineffective for failing to raise a *Brady* claim on direct appeal. The State does not argue that defendant forfeited his *Brady* claim. Accordingly, we address the merits of defendant’s arguments.

¶ 32 B. *Brady* Violation

¶ 33 Defendant argues that his appellate counsel was ineffective for failing to assert a *Brady* claim on appeal. In particular, defendant contends that the State failed to provide him impeachment material prior to trial despite his timely discovery request. Further, defendant asserts that the State failed to correct false testimony after Hodge stated he had never been charged with

or convicted of aggravated battery and improperly objected to any attempt to impeach Hodge with the evidence of the prior conviction that the State gave to defendant.

¶ 34 The State does not address the merits of defendant’s claims. Instead, the State argues defendant failed to provide the “requisite factual support” for his *Brady* claim by not attaching a sufficient record of the aggravated battery conviction to his postconviction petition. According to the State, as a result of this failure, “no assurance exists that Hodge actually had a prior conviction for aggravated battery in St. Clair County case No. 04-CF-533.”

¶ 35 *1. The Applicable Law*

¶ 36 *Brady* held that due process requires the State to disclose certain favorable evidence to a defendant. *People v. Rapp*, 343 Ill. App. 3d 414, 417, 797 N.E.2d 738, 741 (2003). *Brady* material includes “[e]vidence, such as a prior conviction, that the defense may use to impeach one of the State’s witnesses.” *Id.* at 418 (citing Ill. S. Ct. R. 412(c) (codifying *Brady*) and *People v. Williams*, 329 Ill. App. 3d 846, 769 N.E.2d 518 (2002)).

¶ 37 In *Rapp*, the defendant was convicted of predatory criminal sexual assault. *Rapp*, 343 Ill. App. 3d at 417. Subsequently, the defendant filed a postconviction petition arguing the State committed a *Brady* violation by failing to disclose that one of its witnesses was a convicted felon. *Id.* The trial court denied the petition after third-stage proceedings, and the appellate court affirmed. *Id.* at 417-19. The appellate court determined that the failure to disclose the conviction violated *Brady*’s requirement that impeachment material be given to the defendant. *Id.* at 418. However, the court concluded that the defendant failed to demonstrate a reasonable probability that the outcome of the trial would have been different because the witness’s testimony was not material to proving the elements of the offense. *Id.* at 418-19. Thus, the court affirmed the trial court’s order. *Id.* at 419.

¶ 38

2. *This Case*

¶ 39 We conclude that defendant's petition stated the gist of a constitutional claim. Similar to *Rapp*, defendant has also alleged a *Brady* violation based on the failure to disclose a felony conviction that could have been used to impeach a State's witness. While the State provided Hodge's criminal history to defendant, it did so on the Friday before a trial that was scheduled to start on Monday. Defendant's counsel could not have verified the information contained in the report or obtain a certified copy of the conviction before trial. The State disclosed the criminal histories of all other witnesses much earlier. The State's objection at trial to the impeachment is potentially concerning because it should have known if the conviction was accurate. Further, the State has never argued, either before the trial court or this court, that the conviction does not exist.

¶ 40 Unlike *Rapp*, defendant's petition is at the first stage, where the standard is low. Further, Hodge's testimony was relevant regarding how the stabbing occurred, particularly given that the State presented only two witnesses who described those circumstances. The credibility of those witnesses is important, and Hodge's denial that he was ever even charged, much less convicted, of aggravated battery could have had an effect on how the jury assessed his credibility. Accordingly, defendant's petition stated the gist of a constitutional claim, and the trial court erred by dismissing it at the first stage.

¶ 41 In reaching this conclusion, we are mindful that the standard is low precisely because postconviction petitions are often filed by *pro se* defendants who are untrained in the law and lack access to various resources. *People v. Delton*, 227 Ill. 2d 247, 254-55, 882 N.E.2d 516, 519-20 (2008). The State's claim that defendant has not provided the requisite factual support for his petition is unpersuasive. The LEADS report provided before trial clearly listed the convic-

tion. Thus, the basis of defendant's claim is apparent from the record. Additionally, the Illinois State Police Bureau of Identification report defendant attached to his petition identifies the conviction, and, based on the State's brief, the State is not confused about the conviction to which defendant refers. Because the petition "identif[ies] with reasonable certainty the sources, character, and availability of the alleged evidence supporting [defendant's] allegations," defendant's petition is sufficient. *Id.* at 254.

¶ 42 Finally, we express no opinion regarding the ultimate merits of defendant's *Brady* claim or any other claim that he may assert on remand. That the low threshold of the gist standard has been crossed says nothing about the ultimate merits of defendant's claim. It simply means that defendant has alleged enough to require further inquiry.

¶ 43 III. CONCLUSION

¶ 44 For the reasons stated, we reverse the dismissal of defendant's postconviction petition and remand for second-stage proceedings.

¶ 45 Reversed and remanded.