NOTICE
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2019 IL App (5th) 160195-U

NO. 5-16-0195

IN THE

APPELLATE COURT OF ILLINOIS

FIFTH DISTRICT

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).

THE PEOPLE OF THE STATE OF ILLINOIS,	)	Appeal from the
	)	Circuit Court of
Plaintiff-Appellee,	)	St. Clair County.
	)	
v.	)	No. 04-CF-523
	)	
W.D. HOLLINGSWORTH,	)	Honorable
	)	Zina R. Cruse,
Defendant-Appellant.	)	Judge, presiding.

JUSTICE MOORE delivered the judgment of the court.
Justices Chapman and Barberis concurred in the judgment.

ORDER

¶ 1 *Held*: Because we conclude the trial court did not err when it denied the defendant's amended petition for postconviction relief following a third-stage evidentiary hearing, we affirm the court's ruling.

¶ 2 The defendant, W.D. Hollingsworth, appeals the denial, following a third-stage evidentiary hearing in the circuit court of St. Clair County, of his amended petition for postconviction relief. For the following reasons, we affirm.

¶ 3 FACTS

¶ 4 The facts necessary to our disposition of this appeal follow. On May 18, 2012, the defendant filed, *pro se*, a petition for postconviction relief pursuant to the Post-Conviction Hearing Act (Act) (725 ILCS 5/122-1 *et seq.* (West 2012)). Counsel was subsequently appointed

to represent the defendant, and on August 5, 2013, filed a petition to approve fees. Therein, counsel noted that a key issue in the defendant's case was whether the victim's death was caused by the defendant. Accordingly, counsel requested fees to commission a report from Dr. Spitz on this issue. The petition to approve fees was granted. On June 22, 2015, counsel filed, *inter alia*, an amended petition for postconviction relief (the petition). Therein, counsel noted that on September 25, 2006, the defendant entered a plea of guilty to first-degree murder and was subsequently sentenced to 23 years in the Illinois Department of Corrections as a result of the conviction and the terms of his plea agreement. Counsel alleged, *inter alia*, that the defendant would not have entered the plea of guilty but for the ineffective assistance of appointed trial counsel, Karen Craig, whose "failure to properly prepare for trial" included a failure to "pursue an independent medical opinion as to cause of death" and "resulted in a coerced plea" entered by the defendant.

¶ 5 In particular, the petition alleged that although the report relied upon by the State as the State prepared for trial—a report that was authored by forensic pathologist Dr. Raj Nanduri, who conducted the autopsy, and was adopted by the county coroner—concluded that the cause of death was blunt force trauma allegedly inflicted upon the victim by the defendant during a home invasion, that report was inconsistent with the reports of treating physicians at the hospital the victim was taken to and died in approximately 10 days later (who noted the victim had multiple, unrelated health problems, and was, *inter alia*, often noncompliant with his diabetes medication), and with the opinion of independent forensic pathology and toxicology expert Dr. Spitz, who examined the victim's medical records and other relevant information thereafter. The petition alleged that Dr. Spitz's attached report concluded that the cause of death was "cerebral infarction and pneumonia complicated by arteriosclerotic and hypertensive cardiovascular disease," and that at the time the victim died, the victim's "scalp lacerations were essentially healed and did

not play a causative or contributory role in his death." The petition alleged that Dr. Spitz opined in his attached report that despite the "temporal relationship between the head trauma and the cerebral infarction and [the victim's] death, there is no direct cause and effect relationship between the trauma and the death."

¶ 6 The petition alleged that because "with the exception of the tentative report of Dr. Nanduri, all of the medical experts were of the unequivocal opinion that the trauma *** was not related to the cause of death," if the defendant had not entered a plea of guilty, and instead had gone to trial, "the probability of a defense verdict at the close of the State's case was extremely high." The petition alleged that trial counsel Craig did not share any of this information with him, and did not pursue an independent opinion from Dr. Spitz prior to trial, and that as a result, the defendant chose to enter a plea of guilty to the charge of first-degree murder. The petition was accompanied by the medical reports referenced therein, and the affidavit of Dr. Spitz. In his attached report, which was dated October 22, 2014, and which as noted above included the above opinions about the cause of death of the victim, Dr. Spitz also wrote that he was originally contacted by Craig in 2006, and was retained to testify at the defendant's scheduled trial. Dr. Spitz wrote that the day before his testimony was scheduled to occur, he was informed by Craig that his testimony was not needed, and that he had no further correspondence on the case until 2009 and thereafter.

¶ 7 On July 23, 2015, the State filed a motion to dismiss the petition. On August 24, 2015, the defendant filed an amendment to the petition, by which he added "a claim of actual innocence predicated upon the position that [the victim's] death was not a homicide." The State then filed an amended motion to dismiss, which was denied on November 9, 2015, following a hearing at which the parties presented argument on their respective positions. Thereafter, an evidentiary hearing was scheduled. In accordance therewith, on February 10, 2016, the parties

filed a stipulation that Dr. Spitz was retained as an expert witness prior to the date the defendant entered his plea of guilty, and that had Dr. Spitz been asked by Craig to prepare a written report in 2006, his medical conclusions would have been "substantially identical" to those in his October 22, 2014, report, and that if he were called to testify at the evidentiary hearing, "he would testify substantially identically to the attached report dated October 22, 2014." The parties also stipulated that all other physicians who rendered reports in the case, including Dr. Nanduri, would testify substantially similarly to their earlier reports, attached to the petition as exhibits.

¶ 8 At the evidentiary hearing, which also took place on February 10, 2016, the defendant was the first witness to testify, in the defendant's case-in-chief. He testified that Craig was his sole trial counsel and the only person he consulted with prior to entering his plea of guilty in 2006. He testified that he and Craig had "several" discussions about him pleading guilty, and that she told him repeatedly that the State wanted him to accept 40 years in prison as his sentence. The defendant testified that Craig told him that she had spoken with Dr. Spitz, and Dr. Spitz was "supposed to come" to the defendant's upcoming trial. He testified that on the day his trial was set to begin, Craig told him that Dr. Spitz "wasn't there," and that he should take the plea agreement offered by the State, because if he went to trial and was found guilty, he "could receive up to 100 years in prison because of [the victim's] age and the fact that the crime happened in [the victim's] house." The defendant testified that Craig did not tell him why Dr. Spitz was not present.

¶ 9 When asked if Craig told him "what it was that Dr. Spitz was going to say, if and when he showed up for trial," the defendant testified, "No, she did not." When asked if Craig gave him "any indication as to what the general nature of his testimony was going to be," the defendant testified, "No, she never told me—the only thing she ever really gave me concerning Dr. Spitz was his credentials, where he went to school, and stuff like that." The defendant was asked, "You

never saw anything relating to his—what his opinions would be?" The defendant testified, "No." He agreed with postconviction counsel's characterization that on the day the defendant entered his plea of guilty, the State "came off the 40" years it had previously offered him, instead offering 25, then 23, years in prison.

¶ 10 The defendant further testified that Craig never told him about any of the victim's treating physicians, or their reports that documented other health problems the victim had prior to and during his hospitalization following the injuries allegedly inflicted by the defendant. He testified again, with regard to Dr. Spitz, that Craig "didn't say what he was going to be saying." He testified that he was disappointed and scared when he learned that Dr. Spitz would not be at his trial. He testified that as of the date of the evidentiary hearing, he had read Dr. Spitz's report, and those of the treating physicians, and that if he had known of their opinions at the time of his scheduled trial, he "[a]bsolutely" would not have entered a plea of guilty.

¶ 11 On cross-examination by the State, the defendant testified that although Craig was the person who "got" Dr. Spitz, the defendant was the person who originally wanted an expert witness to testify as to the cause of the victim's death, and that he filed a motion requesting such an expert. When asked why he wanted that, he testified, "Because somebody else read the medical records and told me that this man died from something altogether different." He subsequently testified that he asked Craig if Dr. Spitz "was ever coming," and that Craig "didn't answer the question. She just went off, just talking about something else."

¶ 12 The other witness to testify at the evidentiary hearing was the defendant's trial counsel, Karen Craig, who was called as a witness by the State after the defendant rested. Craig testified that her recollection was that she learned of Dr. Spitz as a possible forensic expert witness because he was involved in another case in the area "that had gotten some publicity." She testified that she found his contact information and contacted him where he was located in

Michigan, and secured funding from the trial court to pay Dr. Spitz's expert fees. When asked the purpose of calling Dr. Spitz as a witness, Craig testified, "To check to see whether or not he agreed with the autopsy results and findings of Dr. Nanduri." She testified that based upon the medical records she had received in discovery, and based upon the fact that the victim was "in the hospital for a period of time before he actually passed away," she "felt like it was important to have somebody else take a look at it to see if there were any other intervening causes that might have contributed to him passing away." When asked if she recalled what Dr. Spitz's opinion was, she testified that he indicated to her "that there were problems—he disagreed with Dr. Nanduri's opinion as to the cause of death." Craig testified that Dr. Spitz told her that a healthy person would have recovered quickly from the injuries allegedly inflicted by the defendant, but that "during his treatment, after he'd been there a few days, something catastrophic happened, and he thought it was apparently a stroke." Craig testified that "Dr. Spitz was going to testify that, in his opinion, he did not see the connection between the injuries that had been inflicted on him that caused him to go to the hospital, and his ultimate death."

¶ 13 When asked if she thought "[b]ased on Dr. Spitz's opinion," the defendant "had a viable defense," Craig testified, "Absolutely. That was pretty much [his] only chance at a defense." When asked if she shared "those opinions" with the defendant, Craig testified, "Absolutely." She testified that she could not recall the exact date, but "shortly after" receiving Dr. Spitz's final opinion, she "would have talked to [the defendant] about it and told him what he had said, so that he could make decisions about what to do from there." When asked if she remembered the defendant's "reaction to hearing about Dr. Spitz's report," Craig testified, "I think he was happy to hear that—that we had something to work with." She testified that she reviewed the evidence with the defendant, as well as the strength of the State's evidence in the case. Craig testified that

she secured funding for Dr. Spitz to travel to the trial and testify, and that she was prepared for the trial, and for him to testify.

¶ 14 On cross-examination, Craig testified that she had "at least 15 meetings or so" with the defendant prior to the day he entered his guilty plea, and that she specifically remembered sitting down with the defendant to discuss trial strategy "[a]t least three or four times." She testified that she did not plan to call any physicians or medical personnel other than Dr. Spitz because she "believed that Dr. Spitz could testify, based on his expert opinion, as to what he based his opinion on in their reports." Craig agreed that she had testified at a postplea hearing in this case, on the defendant's motion to withdraw his guilty plea, that "Dr. Spitz indicated he believed there was quite a bit of room for argument with respect to whether or not the injuries that were inflicted on [the victim] were, in fact, the cause of death, legally." When asked if that was "the same information [she] imparted to" the defendant, Craig testified, "Not necessarily verbatim, no." When asked about the "unequivocal" opinions in Dr. Spitz's report "that the scalp injuries and the head injuries were not in any way causative or contributory to [the victim's] death," and whether it was her "impression, that that's how he would testify," Craig answered, "I would say that, yes, that he was going to testify that those things did not cause the death, that the stroke that happened was, in his opinion, not connected to those injuries." She was subsequently asked, "would it be fair to say that, rather than Dr. Spitz's indicating that there was quite a bit of room for argument, in fact, Dr. Spitz said, again, unequivocally, that the cause of death—that the injuries were not causally related to his death, isn't that true?" Craig replied, "In his opinion, yes."

¶ 15 When asked if she recalled the defendant filing his own motion "for an independent doctor," Craig testified, "I don't know. He may have. He may have filed something, probably because we had discussed the fact that I was thinking about doing it. They sometimes do it on

their—as a result of my conversations with them." When asked if it was the defendant's "idea to get *** an independent doctor," Craig testified, "It wasn't only his idea, no." When asked if it was something the two discussed together, she testified, "It was something that I was concerned about based on the hospitalization and the fact that he didn't die directly right after his injuries." She agreed that if both Dr. Spitz and Dr. Nanduri had testified at a trial in this case, "it would have come down to an argument between two experts." When asked why she didn't get a written report from Dr. Spitz in 2006, Craig testified that she did not believe she needed one, and that he was going to charge additional fees to prepare a written report. When asked if she told the defendant what she thought Dr. Spitz "was going to say" when he testified, Craig testified, "Yes." She subsequently testified that she went through what Dr. Spitz told her with the defendant "verbally," and did not believe the defendant would have benefitted from reading a written report about what Dr. Spitz's testimony was expected to be.

¶ 16 Following Craig's testimony, during argument, the State posited that although testimony from Dr. Spitz might have helped the defendant on his first-degree murder charge, it would not have helped him defend against the other charge he was facing at his trial on the day he entered his plea of guilty: a Class X felony home invasion charge that carried a potential sentence of between 6 and 30 years' imprisonment. The State pointed out that the home invasion charge was dropped as part of the defendant's agreement to plead guilty to first-degree murder and serve 23 years in prison. Accordingly, the State posited, Craig actually served the defendant very well and could not be deemed to be ineffective, particularly in light of the fact that the defendant's codefendant, a cousin of the defendant, was sentenced to 40 years in prison for his role in the crimes. The State argued that the defendant "wasn't misled by Ms. Craig," and instead "he made the calucated decision to accept the State's plea offer."

¶ 17 Following the evidentiary hearing, the trial judge took the matter under advisement. On April 25, 2016, the trial judge rendered her written decision, denying the petition because (1) "the [d]efendant failed to prove that there was a substantial denial of federal or state constitutional rights," and (2) "the [d]efendant's claim of actual innocence fails." This timely appeal followed.

¶ 18 ANALYSIS

¶ 19 On appeal, the defendant contends the petition should have been granted because he believes he proved that he received ineffective assistance of counsel where trial counsel Craig failed "to subject the State's case to adversarial testing prior to advising him to enter a guilty plea." The crux of the defendant's position on appeal is that he would not have entered his plea of guilty if Dr. Spitz's opinion had been made available to him. He also contends his postconviction counsel at the evidentiary hearing on the petition "failed to impeach Craig *** when she misrepresented her efforts to obtain an expert witness," which led the circuit court to erroneously deny the petition because the court "did not have an accurate depiction of what happened." We note that although in the fact section of his opening brief on appeal the defendant recounts the many times he complained about Craig's performance, he does not argue that a different attorney should have been appointed to represent him, and he does not argue that he should have been permitted to represent himself, but was not. Accordingly, he has forfeited any contentions related thereto. See Ill. S. Ct. R. 341(h)(7) (eff. May 25, 2018) (argument must contain the contentions of the appellant, the reasons therefor, and the citation of authorities; points not argued in an opening brief are forfeited and shall not be raised in the reply brief, in oral argument, or in a petition for a rehearing). The defendant also does not put forward an argument in support of the actual innocence claim he raised in the trial court, or cite any

authority to support such an argument, and accordingly has forfeited consideration of that claim as well. See *id*.

¶ 20 On appeal from a trial court's denial of a petition for postconviction relief after a third-stage evidentiary hearing has been held, we review the denial for manifest error. See, *e.g.*, *People v. Coleman*, 2013 IL 113307, ¶ 98. Manifest error is that which is plain, clearly evident, and indisputable. See, *e.g.*, *id.* Thus, the denial of a petition for postconviction relief "is manifestly erroneous when the opposite conclusion is clearly evident." *Id*. Our standard of review "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 witnesses' " who testify at the third-stage evidentiary hearing. *People v. Hotwagner*, 2015 IL App (5th) 130525, ¶ 31 (quoting *In re Floyd*, 274 Ill. App. 3d 855, 867 (1995)). We may affirm the ruling of the trial court on any basis supported by the record. See, *e.g.*, *Evans v. Lima Lima Flight Team, Inc.*, 373 Ill. App. 3d 407, 418 (2007); see also, *e.g.*, *People v. Johnson*, 208 Ill. 2d 118, 134 (2003). We may do so because the question before us on appeal is the correctness of the result reached by the trial court, rather than the correctness of the reasoning upon which that result was reached. See, *e.g.*, *Johnson*, 208 Ill. 2d at 128.

¶ 21 A defendant has "the right to effective assistance of counsel at all critical stages of *** criminal proceedings, which include the entry of a guilty plea." *People v. Hughes*, 2012 IL 112817, ¶ 44. To prevail on a claim that counsel was ineffective, a defendant must prove, under what is known as the *Strickland* standard, that (1) plea counsel's performance was objectively unreasonable under prevailing professional norms, and that (2) there exists "a 'reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different.' " *Id*. (quoting *Strickland v. Washington*, 466 U.S. 668, 694 (1984)). In the context of a guilty plea, a defendant who wishes to satisfy this standard must demonstrate that

there exists the reasonable probability that, but for the deficient performance of plea counsel, the defendant would not have entered the plea of guilty, and instead would have insisted on proceeding to trial. *Id*. ¶ 63. It is not enough for a defendant to merely allege he or she would not have entered the plea of guilty and instead would have insisted on going to trial: the defendant must assert either a claim of actual innocence, or must articulate a plausible defense that could have been raised at the trial. *Id*. ¶ 64.

¶ 22 In this case, the defendant claims Craig's performance was "both deficient and prejudicial" because "[h]ad Craig subjected the State's case to adversarial testing by asking for [Dr. Spitz's] report, it would have made little sense to advise [the defendant] to plead guilty." One of the most fundamental problems with the defendant's argument is that it ignores the fact that although Dr. Spitz may have been, as the defendant puts it, "unequivocal" in his opinion, Craig was correct when she testified that Dr. Spitz's opinion would have been only one of two opinions presented at trial, the other opinion being that of Dr. Nanduri, who concluded that the cause of the victim's death was homicide. Because Dr. Spitz's opinion was not the only opinion the jury would have heard, it is inaccurate for the defendant to contend, as he repeatedly does on appeal, that "the victim's cause of death was not a homicide but a stroke," as if it were a foregone conclusion that the jury would have accepted Dr. Spitz's opinion and acted accordingly.

¶ 23 Moreover, Craig repeatedly testified that she *did* convey Dr. Spitz's conclusions to the defendant, and that he was aware of them when he chose to accept the 23 years in prison offered by the State rather than go to trial and potentially face a sentence that was catastrophically longer. The defendant acknowledges that the trial judge, as the person in the best position to weigh the credibility of the witnesses at the evidentiary hearing (see, *e.g.*, *Hotwagner*, 2015 IL App (5th) 130525, ¶ 31), had every right to believe Craig over the defendant, but claims that

even if "Craig did tell [the defendant] what she told the [c]ourt at the [postplea] hearing, which is that there was 'quite a bit of room for argument' according to Dr. Spitz, it would not have been an accurate depiction of his findings." First, we note that, as described in detail above, at the evidentiary hearing the defendant did *not* testify that Craig told him that Dr. Spitz believed there was "quite a bit of room for argument" —he testified, repeatedly and quite specifically, that Craig did not tell him what Dr. Spitz's testimony had been expected to be *at all*. The defendant's present argument fails for this reason alone. Second, Craig's testimony at the postplea hearing was in fact an extremely accurate depiction of the legal consequence of Dr. Spitz's findings: that, at most, there would be room for argument at the defendant's trial as to the cause of death of the victim. To conclude otherwise would be to confuse Dr. Spitz's unequivocal opinion with an unequivocal presentation of that opinion to the jury, the latter of which was something that simply was not going to happen. If a trial had occurred, Craig would have presented Dr. Spitz's unequivocal opinion, and the State would have presented the conflicting opinion of Dr. Nanduri. The existence of a report from Dr. Spitz was not a magical talisman that would have prevented a jury from hearing this conflicting opinion. Indeed, as the State points out, it would have been reckless and unsound for Craig to convey to the defendant that it was "unequivocal" that something other than homicide caused the victim's death, for that might have led the defendant to insist on going to trial, only to find that the cause of death was not unequivocal at all, and that his chances of success at trial were much less than he had been led to believe.

¶ 24 Moreover, as noted above, the trial judge had the right to believe Craig's testimony that she told the defendant about Dr. Spitz's opinion and that the defendant "was happy to hear that—that we had something to work with," and to not believe the defendant's testimony that Craig did not tell him what Dr. Spitz's testimony had been expected to be. If she chose to believe Craig, instead of the defendant, the trial judge easily could have concluded that Craig's performance

was not deficient, and that accordingly there was no ineffective assistance of counsel and no involuntary guilty plea. As a result, we do not conclude that the trial judge's ruling that the defendant failed to prove that he received ineffective assistance of counsel was manifestly erroneous, because her ruling can not be said to contain any error, much less error that is plain, clearly evident, and indisputable. See, *e.g.*, *Coleman*, 2013 IL 113307, ¶ 98. Moreover, the conclusion opposite to that reached by the trial judge in her ruling is not clearly evident. See, *e.g.*, *id.*

¶ 25 The trial judge's ruling is also supported by the fact, argued by the State at the evidentiary hearing and supported by the record on appeal, that when the defendant entered his guilty plea on the charge of first-degree murder in exchange for a prison sentence of 23 years, he was about to go to trial not only on the first-degree murder charge, but also on a home invasion charge on which he faced up to 30 years in prison. Although testimony from Dr. Spitz might have helped the defendant on his first-degree murder charge, it would not have helped him defend against the home invasion charge. The home invasion charge was dropped as part of the defendant's agreement to plead guilty to first-degree murder and serve 23 years in prison. Accordingly, the undisputed facts in this case support a finding by the trial judge that the defendant, as the State argued, "wasn't misled by Ms. Craig," and instead "made the calucated decision to accept the State's plea offer." Therefore, once again the trial judge's ruling that the defendant failed to prove that he received ineffective assistance of counsel was not manifestly erroneous, because her ruling can not be said to contain any error, much less error that is plain, clearly evident, and indisputable. See *id.* Moreover, the conclusion opposite to that reached by the trial judge in her ruling is not clearly evident. See *id.*

¶ 26 With regard to postconviction counsel's performance at the evidentiary hearing, the defendant claims that counsel "failed to impeach Craig *** when she misrepresented her efforts

to obtain an expert witness," which led the circuit court to erroneously deny the petition because the court "did not have an accurate depiction of what happened." According to the defendant, counsel should have impeached Craig by pointing out that although she testified at the hearing that finding an expert witness was her idea, in fact, the record indicates that it was actually the defendant who came up with the idea. The defendant concedes that "this impeachment alone may not have changed the outcome" of the evidentiary hearing, but claims that the failure to impeach Craig left Craig with "more credibility than she deserved."

¶ 27 The Illinois Supreme Court repeatedly has noted the well-settled proposition that there exists no constitutional right to the assistance of counsel during postconviction proceedings, and that therefore a defendant in such proceedings is guaranteed only the level of assistance provided by the Act. See, *e.g.*, *People v. Cotto*, 2016 IL 119006, ¶ 29. Under the Act, a defendant is entitled to a reasonable level of assistance. *Id*. ¶ 30. A reasonable level of assistance is less than the level guaranteed by the U.S. Constitution or our state constitution. *Id*. ¶ 45. In *Cotto*, the court ultimately held that postconviction counsel provided a reasonable level of assistance, in light of the fact that although the defendant alleged that postconviction counsel's performance was deficient because "counsel failed to explain adequately the delay in filing his petition," the defendant failed to identify "what additional information should have been included by counsel in regard to the timeliness issue," and because "[m]ore critically, the *** petition was not dismissed as untimely." *Id*. ¶¶ 49-50.

¶ 28 Moreover, as this court has noted, "trial counsel and postconviction counsel serve different roles," and based upon general principles of law, "the reasonable level of assistance required under the Act is not coextensive with the level of assistance required" of trial (including plea) counsel under the *Strickland* standard. *Hotwagner*, 2015 IL App (5th) 130525, ¶ 37. Nevertheless, the *Strickland* standard that governs trial and plea counsel serves as a point of

comparison, and it "stands to reason that if postconviction counsel's performance cannot be deemed deficient under *Strickland,* it cannot be said that counsel failed to provide the reasonable level of assistance required under [the lesser standard of] the Act." *Id*. As our colleagues in the First District have noted, examples of the failure to provide the reasonable level of assistance required by the Act include failing to shape the defendant's claims into appropriate legal form for presentation to the court, and making statements that demonstrate that postconviction counsel "either lack[s] basic knowledge of the Act or fundamentally [misunderstands] it." *People v. Kelly*, 2012 IL App (1st) 101521, ¶ 40.

¶ 29 In support of his argument in this case, the defendant concedes he was entitled to only a reasonable level of assistance from postconviction counsel, but points to longstanding Illinois case law that stands for the proposition that an attorney's "complete failure to impeach" an important witness "when significant impeachment is available is not trial strategy and, thus, may support an ineffective assistance claim" under *Strickland*. See *People v. Salgado*, 263 Ill. App. 3d 238, 246-47 (1994). As the *Salgado* court noted, however, "[w]hen assessing the importance of the failure to impeach for purposes of a *Strickland* claim, '[t]he value of the potentially impeaching material must be placed in perspective.' " *Id*. at 247 (quoting *People v. Jimerson*, 127 Ill. 2d 12, 33 (1989)). In addition, the defendant points to *People v. Jones*, 2012 IL App (2d) 110346, ¶ 82, for the well-established proposition that "[a] defendant can overcome the strong presumption that defense counsel's choice of strategy was sound if his or her decision appears so irrational and unreasonable that no reasonably effective defense attorney, facing similar circumstances, would pursue such a strategy."

¶ 30 In this case, when we, pursuant to *Salgado*, 263 Ill. App. 3d at 247, place the value of the potentially impeaching material in perspective, we conclude that the failure of postconviction counsel to point out a possible inconsistency as to Craig's testimony about whose idea it was to

seek an expert witness was not unreasonable assistance of counsel. Indeed, the defendant concedes that "this impeachment alone may not have changed the outcome" of the evidentiary hearing, but nevertheless contends that it left Craig with "more credibility than she deserved." In fact, further questioning of Craig on this point might have bolstered her credibility, by giving her the opportunity to clarify whose idea it was, or acknowledge the potential inconsistency found in her choice of words, or otherwise explain any purported discrepancy between her testimony at the evidentiary hearing, and her testimony many years earlier at the defendant's hearing on his motion to withdraw his guilty plea. We simply do not agree with the defendant that "significant impeachment" (see *id*. at 246-47) was available in this situation, and therefore we do not find postconviction counsel's failure to belabor the point of whose idea it was to seek an expert witness to be unreasonable under the circumstances.

¶ 31 Moreover, although the defendant contends that Craig's testimony that it was not "only" the defendant's idea to seek an expert witness "is wrong" because it was the defendant who first filed a motion to seek an expert, the fact that the defendant filed the first motion does not make Craig's testimony untrue. When her statement is viewed in its overall context, it is clear that she was attempting to express that she did not disagree with the idea of getting an expert witness, and that it was something she discussed with the defendant, and in fact something she pursued. The fact that she pursued it is evidenced not only by her testimony, but by the report from Dr. Spitz that was attached to the petition, wherein Dr. Spitz stated that he was originally contacted by Craig in 2006, and was retained to testify at the defendant's scheduled trial. Thus, Craig's testimony did not provide an avenue for "significant impeachment," and the assistance provided by postconviction counsel was reasonable under these circumstances.

¶ 32 Finally, we note that the defendant makes an argument that "[f]undamental fairness requires that [he] be allowed to withdraw his guilty plea," and in support thereof cites authority

with regard to when a motion to withdraw a guilty plea should be granted. However, the defendant's motion to withdraw his guilty plea is not before this court, and the defendant makes no effort to tie that motion, or his legal authority, to the denial of his petition for postconviction relief following a third-stage evidentiary hearing—the ruling that is properly before this court on appeal. Accordingly, the defendant has forfeited consideration of his argument. See Ill. S. Ct. R. 341(h)(7) (eff. May 25, 2018) (argument must contain the contentions of the appellant, the reasons therefor, and the citation of authorities; points not argued in an opening brief are forfeited and shall not be raised in the reply brief, in oral argument, or in a petition for a rehearing).

¶ 33 CONCLUSION

¶ 34 For the foregoing reasons, we affirm the denial of the defendant's amended petition for postconviction relief following a third-stage evidentiary hearing.

¶ 35 Affirmed.