2018 IL App (1st) 152977-U

No. 1-15-2977

Order filed June 8, 2018

Sixth Division

IN THE

APPELLATE COURT OF ILLINOIS

FIRST DISTRICT

THE PEOPLE OF THE STATE OF ILLINOIS,	)	Appeal from the
	)	Circuit Court of
Plaintiff-Appellee,	)	Cook County.
	)	
v.	)	No. 10 CR 6763
	)	
TERRIN LEE,	)	Honorable
	)	Michael B. McHale,
Defendant-Appellant.	)	Judge, presiding.

JUSTICE CONNORS delivered the judgment of the court.
Presiding Justice Hoffman and Justice Cunningham concurred in the judgment.

ORDER

¶ 1 *Held*: The trial court's summary dismissal of defendant's *pro se* postconviction petition is affirmed over his contention that he stated an arguable claim of ineffective assistance of appellate counsel based on counsel's failure to raise on direct appeal that the trial court erred in denying his challenge to a prospective juror for cause.

¶ 2 Defendant Terrin Lee, also known as Markeese Hargrove, appeals from the trial court's first stage summary dismissal of his *pro se* petition for relief under the Post-Conviction Hearing

Act (725 ILCS 5/122-1 *et seq*.) (West 2014)). On appeal, defendant[1] contends that his postconviction petition stated an arguable claim of ineffective assistance of appellate counsel based on counsel's failure to raise on direct appeal the trial court's improper denial of his challenge to a prospective juror for cause. He claims he was tried by a biased jury as a result. We affirm.

¶ 3 I. BACKGROUND

¶ 4 The State proceeded to trial on single counts of aggravated kidnapping, charging that defendant, while armed with a firearm, knowingly confined the victim D.F. against his will (720 ILCS 5/10-2(a)(6) (West 2010)); attempt aggravated criminal sexual assault, charging that he intended to commit aggravated criminal sexual assault against D.F. while armed with a firearm (720 ILCS 5/8-4(a) (West 2010) (720 ILCS 5/12-14(a)(8)) (West 2010)); and armed habitual criminal (AHC) (720 ILCS 5/24-1.7(a) (West 2010)).

¶ 5 Defendant elected a jury trial. Before the *voir dire* examination of prospective juror Richard Cross, defendant had already used seven peremptory challenges. During *voir dire*, the court engaged in the following colloquy with Cross:

"Q. Sir, do you have any bias or prejudice against a person because they have been charged with a crime?

A. Charged or convicted, sir?

Q. Charged?

[1] As is more fully explained later in this order, defendant was granted leave to file a supplemental *pro se* brief on May 4, 2018, even though he already had filed a brief through his appointed appellate counsel. For purposes of clarity, and in order to avoid confusion, the only section of this order addressing defendant's *pro se* contentions is section II(A). In any other part of this order when argument made by "defendant" is referenced, we are referring to defendant's argument through his appellate counsel. When defendant is acting, or has acted, *pro se*, it is expressly denoted as such.

A. No, sir.

Q. Is there anything about this kind of case that bothers you such that you could not be fair or impartial?

A. I find the charges reprehensible, but I don't see anything impartial.

Q. Sir, would you give any more or any less weight to the testimony of a witness by virtue of their job or title such as a doctor, or a lawyer, or a fireman, or a policeman?

A. Probably more, as she [another juror] said, if they're expert witnesses.

Q. But aside from expert testimony, would you take the same approach for all witnesses to decide if you believe them, and if so, how much you are going to believe?

A. No.

Q. Why not?

A. Usually, well, like policemen, for example, they would be the best in the field usually. I have a tendency to believe more the professional opinions on things.

Q. If the State, sir, were to prove the Defendant guilty beyond a reasonable doubt, would you hesitate in signing a guilty verdict?

A. No.

Q. If the State fails to prove the Defendant guilty beyond a reasonable doubt, would you hesitate in signing a not guilty verdict?

A. No, sir.

Q. Will you follow my instructions on the law that come at the end of the case regardless of what you think the law ought to be?

A. Yes.

Q. Can you discuss and deliberate with your fellow jurors the evidence and law in the case in reaching that verdict?

A. Yes.

Q. Sir, finally, is there any reason at all that leads you to believe that you could not be a fair or impartial juror?

A. No, your Honor."

¶ 6 Defense counsel challenged Cross for cause, arguing, "he would probably give more weight to the police. He said he believes they are the best in the field. He has a tendency to believe professionals. He said the charges are reprehensible." The court denied defendant's challenge, finding:

> "I don't think his answers taken as a whole rise to a level where challenge for cause is appropriate.
>
> He did indicate he could be fair and impartial. He indicated that he would follow the law as I give it to him. The rules of evidence are part of the law that he would follow.
>
> His feelings such as they are would not [,] based on his answers [,] prevent him from being fair and impartial."

The State then used two peremptory challenges on two other prospective jurors. The court noted that defendant had already used seven peremptory challenges and juror Cross would serve on the regular jury.

¶ 7 We set out a full recitation of the evidence presented at trial in our prior order affirming the trial court's judgment. *People v. Lee*, 2014 IL App (1st) 113670-U. We therefore will summarize the facts as relevant to this appeal.

¶ 8 At trial, D.F., who was 16-years-old, testified that he had a prior juvenile conviction for aggravated robbery. On March 18, 2010, at about 11:30 p.m., after arguing with his mother, D.F left his home to go to his aunt's house a "[c]ouple of miles" away. As he was walking there, at about 1 or 2 a.m., a four-door blue car pulled up to him and a man, identified at trial as defendant, got out, pointed a black gun at him, and forced him into his car.

¶ 9 Defendant drove D.F. to a two-story building, parked the car, opened D.F.'s door, and D.F. got out. Defendant still had the gun and D.F. did not run because he was scared. Defendant and D.F. entered the second floor apartment using the back door entrance. At this point, D.F. did not know what defendant had done with the gun.

¶ 10 Defendant took D.F. into a room that had a television and a bed, left the room, and shut the door. Defendant returned to the room wearing only boxer shorts and a t-shirt and asked D.F. if he had "ever sucked penis." D.F. told him "No" and defendant responded, "You should try it." D.F. told him "No." Defendant "pulled down his underwear" and told D.F. to "suck his private area." D.F. stood up and said "No." Defendant asked D.F., "You scared?" and D.F. responded, "Yes" and shook his head. Defendant said "all right," walked out, and closed the door.

¶ 11 D.F. opened the door and asked defendant if he had a bathroom. Defendant told him the toilet did not work in the bathroom and "he usually use it out the window." Defendant opened the window on the other side of the room and then went into another room. D.F. jumped out of the open window, walked to the police station, and told the officers there what had happened.

D.F. testified that he was in defendant's apartment for about thirty minutes before he jumped out of the window.

¶ 12 The officers took D.F. to defendant's building and D.F. identified defendant's car that was parked there. D.F. testified that, on the night of the incident, defendant was taller than him and had "dreads or braids." Later that morning, D.F. identified defendant in photographs as the person who made him get into the car at gun point and, about 10 days later, he identified defendant in a line-up.

¶ 13 On cross-examination, D.F. testified that it took him a couple of hours to walk three miles from his mother's house to where defendant picked him up. He had not stopped by any stores or to talk to anyone. Defendant did not make any attempts to restrain D.F. and D.F. did not see the gun after he entered defendant's apartment building. D.F. did not sustain any bruises, abrasions, broken limbs, or scrapes from jumping out of the window, which was 15 feet above the ground. No one chased or yelled at D.F. when he jumped out of the window.

¶ 14 D.F. testified that he escaped defendant's apartment at about 2:30 a.m. and defendant followed him to the police station. When D.F. reached the police station, defendant walked up with a dog and yelled, "Hey, hey, come here." D.F. then walked into the station. D.F. testified that the person he identified in the physical line-up was "way taller" than him and that he had told a detective that defendant had a "large semi-automatic gun." D.F. did not remember telling the police officers that defendant was shorter than him.

¶ 15 Melissa Williams, D.F.'s mother, testified that, on March 18, 2010, at about 11 p.m., she and D.F. got into an argument, after which D.F. left the house. At about 4 a.m., police officers

brought D.F. home. Williams testified that D.F. left her house that night without her permission and D.F. would have expected to be punished when he got home.

¶ 16 Chicago police officer Monica Akins testified that, on March 18, 2010, at about 4:40 a.m., she and her partner spoke with D.F. at the police station. Akins testified that D.F.'s "demeanor was that of a rape victim," D.F. "was very withdrawn," "spoke very softly," "kind of stared out into space," and "acted as if it was very difficult for him to speak to me and give me the information."

¶ 17 D.F. directed Akins to the building where defendant had detained him and there identified defendant's vehicle. A search of the license plate and vehicle identification numbers showed that defendant owned the vehicle. Akins attempted to enter the front and back entrances of the building but the doors were dead bolted and no one responded when she knocked.

¶ 18 On cross-examination, Akins testified that, in her report prepared after the incident, it stated that D.F. told her the incident occurred at about 3:50 a.m., defendant was two inches shorter than D.F and weighed about 150 to 170 pounds, and defendant had put the gun to D.F's head when defendant picked him up in the car. In Akins' report, it also stated that D.F. told her that defendant took him to the bedroom, exposed himself, and, at that point, left the room for the first time. Akins could not recall whether D.F. told her that defendant had pursued him outside the station with a dog. Akins did not recover a gun in her investigation.

¶ 19 Chicago police detective Robert Barnes testified that, on March 19, 2010, D.F. identified defendant in a photograph line-up and, on March 29, 2010, he identified defendant in the physical line-up as the person who committed the offense against him on March 19, 2010. On cross-examination, Barnes testified that D.F. had told him that the incident occurred at 3:50 a.m.

and he acknowledged that a case supplementary report prepared after the incident stated that D.F. described defendant's height as 5'4" and D.F. told Barnes that D.F. was 5'6."[2]

¶ 20 The State presented a stipulation between the parties that defendant had been convicted of two qualifying offenses under the AHC statute.

¶ 21 Alfred Halley, defendant's cousin, and Eugene Michael, defendant's childhood friend, testified for defendant. Halley and Michael both testified that they were with defendant at a party on March 18, 2010, and into the early morning hours of March 19, 2010. Defendant was at the party for the entire time that both Halley and Michael were there. At about 11:30 or 11:45 p.m., some people at the party, including defendant, Halley, and Michael, went around the corner to another location. At about 4 a.m., Michael and defendant left the party. Halley and Michael learned that defendant had been arrested, but neither went to the police to tell them they were with defendant that night.

¶ 22 Following argument, the jury found defendant guilty of aggravated kidnapping, AHC, and attempt aggravated criminal sexual assault. Defendant filed a motion for new trial, arguing, *inter alia*, that the court erred when it failed to strike juror Cross for cause. The court denied defendant's motion.

¶ 23 The court merged the attempt aggravated criminal sexual assault and AHC convictions into the aggravated kidnapping conviction and sentenced defendant to natural life in prison without the possibility of parole.

[2] In defendant's brief, he refers to the arrest report that indicates defendant's height was 6'4" and weight was 250 pounds. However, the arrest report was not admitted into evidence.

¶ 24 Defendant appealed, arguing, *inter alia*, that his convictions should be reversed because D.F.'s testimony was not credible. We affirmed the judgment. *People v. Lee*, 2014 IL App (1st) 113670-U.

¶ 25 On May 29, 2015, defendant filed a *pro se* postconviction petition. He alleged, as relevant here, that appellate counsel provided ineffective assistance of counsel because he failed to raise on direct appeal the claim that the trial court erred when it denied defendant's motion to strike two jurors, including Cross, for cause. In his petition, defendant also requested the appointment of counsel.

¶ 26 On August 7, 2015, the trial court summarily dismissed defendant's postconviction petition, finding that the issues raised were frivolous and patently without merit. In the court's written order, it concluded that, because the two jurors indicated that they would follow the court's instructions and could be fair and impartial, defendant's claim that the court erred in denying defendant's motion to strike the jurors for cause was without merit. This appeal followed.

¶ 27 Although represented by the State Appellate Defender's Office on appeal, defendant sought and was granted leave to file a *pro se* supplemental brief on May 4, 2018. However, to be clear, defendant has never requested that this court allow him to proceed *pro se*. Prior to the filing of defendant's motion, this court had already issued an order pursuant to Illinois Supreme Court Rule 23(b) resolving this appeal. Ill. S. Ct. R. 23(b) (eff. Jul. 1, 2011). However, in light of our allowance of the filing of defendant's *pro se* supplemental brief, we withdrew our original Rule 23 order, and now issue this order in its stead.

¶ 28 II. ANALYSIS

¶ 29 A. Defendant's *Pro Se* Supplemental Brief

¶ 30 We first address the contentions raised in defendant's *pro se* supplemental brief. This court granted defendant leave to file his *pro se* supplemental brief in an order dated May 4, 2018. Specifically, this court's order stated:

> "This cause coming to be heard on the court's own motion, the [c]ourt being advised that [d]efendant presented a motion to file a *pro se* supplemental brief instanter which was received by the [c]lerk on March 28, 2018 and not processed until May 1, 2018, and the [c]ourt being advised in the premises; IT IS HEREBY ORDERED that defendant-appellant's motion for leave to file a *pro se* supplemental brief instanter is ALLOWED." (Emphasis in original.)

It is well-settled that "a defendant has no right to both self-representation and the assistance of counsel." *People v. Thompson*, 331 Ill. App. 3d 948, 951 (2002). "If a defendant is represented by appellate counsel, whether appointed or privately retained, he has no right to a 'hybrid appeal' in which he alternates between being represented by counsel and proceeding *pro se* through the filing of a supplemental *pro se* brief." *Id.* at 951-52. Here, defendant is represented by the Office of the State Appellate Defender, and thus he has no right to a hybrid appeal. In fact, this court could strike defendant's *pro se* brief on its own motion. See *i.e.*, *People v. Woods*, 292 Ill. App. 3d 172, 179 ("on this court's own motion, we strike defendant's *pro se* brief and decline to address it or consider it in any way"), and *People v. Coleman*, 203 Ill. App. 3d 83, 101 (1990) ("we would be justified in striking the defendant's *pro se* supplemental brief raising the issue"). However, because defendant was sentenced to natural life and we have granted him leave to file his *pro se* brief, we choose to address his *pro se* contentions, none of which are successful.

¶ 31 In his *pro se* supplemental brief, defendant argues the following five points: (1) his natural life sentence should be vacated where the sentence imposed involves an improper double enhancement; (2) the armed habitual criminal statute is facially unconstitutional because it criminalizes both the lawful and unlawful possession of firearms; (3) his conviction for AHC violates due process where the retroactive application of the statute permits the state to attach criminal liability for past convictions outside the terms of the antecedent negotiated pleas; (4) Illinois Appellate Court First District Rule 31(c), (Ill. App. Ct., First Dist. R. 31(c) (Sept 1, 2004)), violates the Illinois constitution; and (5) he was deprived of reasonable assistance of counsel on appeal from denial of his post-conviction petition. We address each in turn.

¶ 32 "The purpose of a postconviction proceeding is to permit inquiry into constitutional issues involved in the original conviction and sentence that were not, and could not have been, adjudicated previously on direct appeal. [Citation.] Issues that were raised and decided on direct appeal are barred by *res judicata*, and issues that could have been raised on direct appeal, but were not, are forfeited." *People v. English*, 2013 IL 112890, ¶ 22.

¶ 33 We find that arguments one through four of defendant's *pro se* brief are forfeited, where all four contentions could have been raised in his direct appeal, but were not. On direct appeal, defendant argued: "(1) his convictions should be reversed because the victim's testimony was not credible[,] (2) he was denied a fair trial by certain witness' improper testimony, (3) he was denied effective assistance of counsel, and (4) the State failed to establish that the weapon used was a firearm." *Lee*, 2014 IL App (1st) 113670-U, ¶ 1. None of the first four arguments that defendant attempts to present now in his *pro se* brief were raised in a timely manner, and thus are forfeited. We recognize that "the doctrines of *res judicata* and forfeiture are relaxed [*inter alia*]

where *** the forfeiture stems from the ineffective assistance of appellate counsel." *English*, 2013 IL 112890, ¶ 22. Here, defendant's *pro se* brief does not allege that his direct appeal counsel was ineffective, and thus, this exception does not apply.

¶ 34 Instead of attacking his previous counsel, the fifth argument of defendant's *pro se* brief alleges that he was "deprived of reasonable assistance of counsel on appeal from denial of his post-conviction petition." Essentially, defendant argues that because his current, appointed post-conviction counsel did not raise the arguments that he raised in his *pro se* supplemental brief, his counsel provided unreasonable assistance. We find this argument unconvincing where all four of defendant's *pro se* arguments were forfeited. Additionally, a defendant's "[a]ppellate counsel is not required to raise every conceivable issue on appeal, and it is not incompetence for counsel to refrain from raising issues that counsel believes are without merit." *People v. Stephens*, 2012 IL App (1st) 110296, ¶ 109. Thus, we determine that all five of the issues raised in defendant's *pro se* supplemental brief are unsuccessful.

¶ 35 B. Defendant's Brief through Counsel

¶ 36 Defendant contends the trial court erred when it summarily dismissed his postconviction petition. He argues his postconviction petition stated an arguable claim that he was denied effective assistance of appellate counsel because his counsel did not argue on direct appeal that the trial court erred when it denied his motion to dismiss juror Cross for cause. He asserts the court should have granted his challenge for cause because Cross stated that he "tended to believe the professional opinion of a police officer, and would give more weight to such testimony." He claims Cross's "pro-police bias could have undermined his impartiality and resulted in Cross giving undue weight to Officer Akins' testimony, which was extremely consequential here in

light of the weakness of D.F.'s testimony."[3] He asserts that, at the time the court denied his motion for cause, he had exhausted all seven peremptory challenges and Cross therefore sat on the jury. Defendant contends he therefore was denied the right to a fair trial and unbiased jury, an issue his appellate counsel should have raised. He requests that we reverse the trial court's order dismissing his petition as he presented the gist of an arguable claim of ineffective assistance of appellate counsel.

¶ 37 Under the Post-Conviction Hearing Act, a "defendant may assert a substantial denial of his or her constitutional rights in the proceedings that led to the conviction." *People v. Walker*, 2015 IL App (1st) 130530, ¶ 11; 725 ILCS 5/122-1 *et seq.* (West 2014). The postconviction process involves three stages. *People v. Little*, 335 Ill. App. 3d 1046, 1050 (2003).

¶ 38 At the first stage, which applies here, the trial court shall summarily dismiss a petition if it determines the petition is "frivolous or patently without merit." 725 ILCS 5/122-2.1(a)(2) (West 2014). A petition is frivolous or patently without merit if it "has no arguable basis either in law or in fact," *i.e.*, it is "based on an indisputably meritless legal theory or a fanciful factual allegation." *People v. Hodges*, 234 Ill. 2d 1, 11-12, 16 (2009). At the first stage, the trial court independently reviews the petition (*Hodges*, 234 Ill. 2d at 10), and takes all allegations as true, unless they are "positively rebutted by the record" (*People v. Williams*, 364 Ill. App. 3d 1017, 1022 (2006)). On review of a trial court's summary dismissal at the first stage, we must determine whether the petition set forth a "gist of a constitutional claim." *People v. Palmer*, 2017

[3] We have already concluded in our prior order affirming the defendant's conviction that "a rational trier of fact could have convicted defendant beyond a reasonable doubt" and "[t]he jury clearly resolved any inconsistencies in favor of the State, and we will not substitute our judgment for that of the jury." *People v. Lee*, 2014 IL App (1st) 113670-U, ¶ 27. Thus, to the limited extent defendant is challenging D.F.'s credibility as it relates to the sufficiency of the evidence, we do not consider the issue.

IL App (4th) 150020, ¶ 16. Our review of the trial court's summary dismissal of a postconviction petition is *de novo*. *Palmer*, 2017 IL App (4th) 150020, ¶ 16.

¶ 39 A defendant has a constitutional right to effective assistance of counsel at trial and on the first appeal as of right. *People v. Haynes*, 192 Ill. 2d 437, 472 (2000). We review claims of ineffective assistance of appellate counsel under the standard provided in *Strickland v. Washington*, 466 U.S. 668 (1984). *People v. Shief*, 2016 IL App (1st) 141022, ¶ 55. Under this standard, a defendant must show that (1) "counsel's performance was deficient" and (2) "the deficient performance prejudiced the defense." *Strickland*, 466 U.S. at 687. In the context of first stage postconviction proceedings, the court may not summarily dismiss a petition that alleges ineffective assistance of counsel if: "(1) counsel's performance arguably fell below an objective standard of reasonableness; and (2) the petitioner was arguably prejudiced as a result." *People v. Scott*, 2011 IL App (1st) 100122, ¶ 29.

¶ 40 Again, we reiterate that a defendant's "[a]ppellate counsel is not required to raise every conceivable issue on appeal, and it is not incompetence for counsel to refrain from raising issues that counsel believes are without merit." *Stephens*, 2012 IL App (1st) 110296, ¶ 109. To prove a claim for ineffective assistance of appellate counsel, a defendant "must show that the failure to raise an issue on direct appeal was objectively unreasonable and that the decision prejudiced petitioner." *People v. Childress*, 191 Ill. 2d 168, 175 (2000). "[U]nless the underlying issues are meritorious, the defendant suffers no prejudice from counsel's failure to raise them on appeal." *People v. Little*, 335 Ill. App. 3d 1046, 1054 (2003). We therefore must determine whether defendant's underlying claim, that the trial court erred in denying his challenge to Cross for cause, would have been successful had counsel raised it on direct appeal. See *People v. Enis*, 194

Ill. 2d 361, 384 (2000). We conclude that, had appellate counsel raised on direct appeal the claim that the trial court erred when it denied defendant's challenge to juror Cross for cause, the claim would not have been successful.

¶ 41 "[O]ne of the most priceless safeguards of individual liberty is the right to trial by a panel of impartial jurors." *People v. Washington*, 104 Ill. App. 3d 386, 390 (1982). "[T]he purpose of voir dire [*sic*] examination is to filter out prospective jurors who are unable or unwilling to be impartial." *Washington*, 104 Ill. App. 3d at 390. A defendant may challenge prospective jury members for cause or peremptorily. *People v. Bowens*, 407 Ill. App. 3d 1094, 1098 (2011).

¶ 42 A challenge for cause is a " 'challenge supported by a specified reason, such as bias or prejudice, that would disqualify that potential juror.' " *Bowens*, 407 Ill. App. 3d at 1098 (2011) (quoting Black's Law Dictionary 245 (8th ed. 2004)). There are no limits on the number of challenges for cause and dismissing a juror for cause is within the trial court's discretion. *Bowens*, 407 Ill. App. 3d at 1098.[4] "[T]he court's determination of a person's competence to sit as a juror will not be overturned unless the court's decision is against the manifest weight of the evidence." *People v. Sims*, 244 Ill. App. 3d 966, 987 (1993). It is a defendant's burden to show that a juror was not fair and impartial. *Sims*, 244 Ill. App. 3d at 987.

¶ 43 Defendant asserts that the trial court should have granted his challenge to Cross for cause because Cross had a "pro-police bias" and "stated that he tended to believe the professional opinion of a police officer, and would give more weight to such testimony." However, defendant's claim that he was tried by a biased jury because Cross sat on the juror is entirely

[4] In contrast, a peremptory challenge need not be supported by a reason but when, as here, a defendant faces a sentence of imprisonment, he is limited to seven peremptory challenges. *Bowens*, 407 Ill. App. 3d at 1098 (quoting Black's Law Dictionary 245 (8th ed. 2004)); Ill. S. Ct. R. 434(d) (eff. Feb. 6, 2013).

speculative. He has cited no authority to establish that Cross's statements in his *voir dire* examination would have automatically disqualified him. *Sims*, 244 Ill. App. 3d at 987-89 (affirming the trial court's denial of the defendant's challenge to a juror for cause where the prospective juror acknowledged he would give more weight to police officers and stated that a police officer's testimony "would be more credible," noting that the defendant cited no authority that held that the juror's responses automatically disqualified him as a juror).

¶ 44 Further, the court could have reasonably inferred from Cross's *voir dire* examination that Cross was able and willing to be a fair and impartial juror. Even though Cross stated he found the "charges reprehensible" and tended to give more weight to police testimony, he also unequivocally and expressly acknowledged he would follow the court's instructions regardless of what he thought the law should be, he would not hesitate in signing a not guilty verdict if the State failed to prove defendant guilty beyond a reasonable doubt, and there was no reason that he could not be fair or impartial. See *Grady v. Marchini*, 375 Ill. App. 3d 174, 180 (2007) ("A prospective juror's statement under oath that she can lay aside matters that may indicate bias and render a verdict based on the evidence is given great weight."); see also *Sims*, 244 Ill. App. 3d at 987-89 (concluding that, from the colloquy between the prospective juror and counsel, it was reasonable to infer that the court found the prospective juror was willing to be fair and impartial).

¶ 45 We recognize that Cross stated he would "probably" give more weight to the testimony of an "expert witness" policeman, that "policemen" "would be the best in the field usually," and he tended "to believe more the professional opinions on things." However, we cannot find his responses to the "hypothetical questioning" about what weight he would give to the possible testimony of an unidentified police officer versus the possible testimony of an unidentified

witness sufficient to demonstrate that he would not be fair or impartial. See *Sims*, 244 Ill. App. 3d at 989 (where the prospective juror made "pro-police" statements, the trial court's denial of the defendant's challenge for cause was not against the manifest weight of the evidence "simply because [the juror] became entangled in the frequently occurring imbroglio of the hypothetical questioning as to what weight should a potential juror give to the unknown testimony of an unknown police officer versus the unknown testimony of an unknown witness").

¶ 46 Further, subsequent to Cross's statements about a hypothetical police officer's testimony, he expressly stated he would follow the law and there was no reason he could not be fair or impartial. See *People v. Jarosiewicz*, 55 Ill. App. 3d 1057, 1060-61 (1977) (concluding that the defendant's challenge for cause was properly denied where, subsequent to the juror's statement that "he did not believe a police officer would commit an unprovoked act of violence on a citizen," the juror "reaffirmed he would be fair and impartial"). Accordingly, we find that the court's denial of defendant's challenge to Cross for cause was not against the manifest weight of the evidence.

¶ 47 Any claim of error by the trial court on this basis would, therefore, not have been meritorious on appeal. Thus, defendant has failed to demonstrate an arguable claim of ineffective assistance of appellate counsel, as he has failed to establish that he was arguably prejudiced when his appellate counsel did not raise this claim on direct appeal.

¶ 48 In sum, because defendant failed to establish an arguable claim of ineffective assistance of appellate counsel, the court properly dismissed his petition as frivolous and patently without merit.

¶ 49 III. CONCLUSION

¶ 50 For the reasons explained above, we affirm the judgment of the circuit court.

¶ 51 Affirmed.