2014 IL App (2d) 130018-U
No. 2-13-0018
Order filed August 14, 2014

IN THE

APPELLATE COURT OF ILLINOIS

SECOND DISTRICT

THE PEOPLE OF THE STATE OF ILLINOIS,	)	Appeal from the Circuit Court of Winnebago County.
Plaintiff-Appellee,	)	
v.	)	No. 08-CF-1200
CHRISTOPHER L. CHANDLER,	)	Honorable Joseph G. McGraw,
Defendant-Appellant.	)	Judge, Presiding.

JUSTICE ZENOFF delivered the judgment of the court.
Justices Schostok and Hudson concurred in the judgment.

ORDER

¶ 1 *Held*: The trial court properly summarily dismissed defendant's *pro se* petition for relief under the Post-Conviction Hearing Act.

¶ 2 Defendant, Christopher L. Chandler, appeals from the first-stage dismissal of his petition under the Post-Conviction Hearing Act (Act) (725 ILCS 5/122-1 *et seq*. (West 2012)). For the reasons that follow, we affirm.

¶ 3 I. BACKGROUND

¶ 4 Following a jury trial, defendant was convicted of aggravated domestic battery (720 ILCS 5/12-3.3 (West 2008)), aggravated battery (720 ILCS 5/12-4 (West 2008)), and two counts

of domestic battery (720 ILCS 5/12-3.2(a)(1) (West 2008)). The underlying facts are set forth in this court's August 26, 2011, order (*People v. Chandler*, 2011 IL App (2d) 090071-U). Accordingly, we include only the facts that are necessary to resolve defendant's current appeal from the dismissal of his postconviction petition.

¶ 5 Nora Jansen testified at trial that she had a brief dating relationship with defendant during which he was physically abusive toward her on several occasions. According to Jansen, on Sunday, March 23, 2008, she went with defendant to "Meat Man's" house, where defendant hit her with his fist, kicked her and stomped on her, hit her in the head with a piece of trim, and punched her in the face several times. Jansen admitted to having been robbed by a man known as "Little C." on Thursday, March 20, 2008, prior to the attack by defendant. While she testified that she had wrestled and fought with Little C., she denied that he had punched her.

¶ 6 State witness Jodi Woods corroborated Jansen's version of events on two points. Woods testified that she saw Jansen on the evening of Saturday, March 22, 2008, and that Jansen looked "fine"—specifically, she did not have black eyes, was not bleeding, did not have blood on her clothes, and her lips were not swollen. Woods next saw Jansen on the afternoon of Monday, March 24, 2008, at which time Jansen's face was black and blue, her lips were swollen, and her head was split open.

¶ 7 Officer Schissel of the Rockford police department also testified for the State and corroborated Jansen's testimony that she was not injured by Little C. during the robbery. Specifically, the officer spoke with Jansen on Thursday, March 20, 2008, at 5:23 p.m as he was making an unrelated arrest. He testified that Jansen was upset at the time and complained of having been robbed, but did not appear to be injured.

¶ 8 Nurse Kennedy-Etes also testified for the State. She attended to Jansen at Rockford Memorial Hospital on Monday, March 24, 2008. At that time, Jansen had numerous injuries "[f]rom head to toe," including lacerations to the back of her head and swelling and bruising on her face. The nurse noticed that Jansen had blood in her hair, that the cut on her head was a fresh wound, and that there was no scabbing.

¶ 9 Defendant's theory at trial, as articulated in his closing argument, was that Jansen was injured by Little C. during the robbery. To that end, three of Defendant's witnesses—Steven Eisman, Everett Clay, and Julia Leach—provided testimony tending to suggest that Jansen was injured by Little C. during the robbery on Thursday rather than by defendant the following Sunday.

¶ 10 On direct appeal, defendant argued: 1) that he was not proved guilty beyond a reasonable doubt of aggravated domestic battery and domestic battery because the State failed to prove that Jansen was a family or household member; and 2) alternatively, that defendant's extended-term sentences for aggravated battery and domestic battery should be reduced to nonextended-term sentences because an extended-term sentence can be imposed only on the most serious felony, which in this case was aggravated domestic battery. We held that a rational trier of fact could have found that defendant and Jansen were family or household members, but that the trial court improperly ordered extended-term sentences for the aggravated battery and domestic battery convictions. *Chandler*, 2011 IL App (2d) 090071-U, ¶¶ 38, 42.

¶ 11 Defendant filed a *pro se* postconviction petition on November 19, 2012. On December 6, 2012, the trial court summarily dismissed the petition as being frivolous and patently without merit. Defendant timely appeals.

¶ 12 II. ANALYSIS

¶ 13 Defendant argues that the trial court erred in summarily dismissing his petition because three of his claims alleged the gist of a constitutional violation: 1) the trial court violated *People v. Krankel*, 102 Ill. 2d 181 (1984), by refusing to consider defendant's *pro se* posttrial motion alleging ineffective assistance of counsel, and his appellate counsel was ineffective for not raising that issue on direct appeal; 2) his appellate counsel was ineffective for failing to challenge on direct appeal the State's closing argument, in which it told the jury to "send a message" and "teach this defendant a lesson" by convicting him; and 3) the trial court erred in precluding defendant from impeaching Woods regarding a recent prostitution charge or conviction, and counsel was ineffective for failing to raise that issue on direct appeal. We address each of his arguments in turn, providing additional facts relevant to each claim.

¶ 14 Standard of Review

¶ 15 The Act "provides a method by which persons under criminal sentence in this state can assert that their convictions were the result of a substantial denial of their rights under the United States Constitution or the Illinois Constitution or both." *People v. Tate*, 2012 IL 112214, ¶ 8. An action under the Act is a collateral attack on the trial court proceedings rather than an appeal from the judgment of conviction, so "issues raised and decided on direct appeal are barred by *res judicata*, and issues that could have been raised but were not are forfeited." *Tate*, 2012 IL 112214, ¶ 8. Nevertheless, the forfeiture rules are relaxed when the defendant alleges ineffectiveness of appellate counsel. *People v. Petrenko*, 237 Ill. 2d 490, 499 (2010).

¶ 16 At the first stage of a postconviction proceeding in a noncapital case, the trial court independently reviews the petition, taking the allegations as true (*Tate*, 2012 IL 112214, ¶ 9), to determine whether the petition is "frivolous or is patently without merit" (725 ILCS 5/122-2.1(a)(2) (West 2012)). The State is not involved in the first stage, and the trial court may

summarily dismiss the petition as frivolous or patently without merit only if it has "no arguable basis either in law or in fact." *Tate,* 2012 IL 112214, ¶ 9. While the petition must "clearly set forth the respects in which petitioner's constitutional rights were violated" (725 ILCS 5/122-2 (West 2012)), the threshold for survival at the first stage is low (*People v. Hodges*, 234 Ill. 2d 1, 9 (2009)). The *pro se* defendant must set forth only the "gist" of a constitutional claim, which means that the petition contains "enough facts to make out a claim that is arguably constitutional." *Hodges*, 234 Ill. 2d at 9.

¶ 17 A defendant's claim of ineffective assistance of counsel is evaluated in accordance with the standards articulated in *Strickland v. Washington*, 466 U.S. 668 (1984). *People v. Brown*, 236 Ill. 2d 175, 185 (2010). Accordingly, under the Act, the trial court may not summarily dismiss a petition alleging ineffective assistance if: (1) counsel's performance arguably fell below an objective standard of reasonableness and (2) the petitioner was arguably prejudiced as a result. *Brown*, 236 Ill. 2d at 185. Our review of the trial court's first-stage dismissal of the petition is *de novo*. *Hodges*, 234 Ill. 2d at 9.

¶ 18 *Krankel*

¶ 19 Defendant first claims that the trial court violated *Krankel* and its progeny by refusing to consider his *pro se* posttrial motion alleging ineffective assistance of counsel, and that his appellate counsel was ineffective for not raising that issue on direct appeal.

¶ 20 After defendant was convicted, he filed several posttrial *pro se* pleadings, including a September 30, 2008, motion for new trial on grounds of insufficient defense. In that motion, defendant asserted that his trial counsel was "insufficient" for failing to interview "material witnesses" Jasen Jones and Micheal Craig. He also listed Jeritt Smith, L. Baker,[1] and

[1] It appears from the motion that defendant was referring to Shonda Baker, who was

Christopher McGee as "material witnesses."[2] Specifically, defendant alleged that his counsel was given permission by Jones' attorney to interview Jones, but that the witness was never interviewed or subpoenaed by defense counsel even though he had been in the "Justice Center" (the Winnebago County jail). Similarly, defendant added that Craig was "implicated before and duering [*sic*] trial," but that he was never interviewed or subpoenaed. Defendant claimed that his attorney was taken to Craig's home, but that counsel neither returned nor sent an investigator back to the home. Additionally, defendant claimed that Smith "was implicated as witnessing this matter" and had "allegedly even made a police report," but that he was never subpoenaed. Finally, defendant said that Baker "was brought to court but was not allowed to testifie [*sic*] by States [*sic*] Attorney, and this issue was not addressed by defense attorney." The September 30, 2008, motion did not provide any information about McGee other than to note that he was a "material witness."

¶ 21 Among his contentions in the postconviction petition, defendant alleged that the trial court never conducted a proper inquiry regarding his allegation that his counsel was ineffective for failing to interview and call at trial "other certain witnesses" and "other certain persons." Defense counsel on appeal has interpreted this as referring to Jones, Craig, Smith, Baker, and McGee, whom defendant had identified as "material witnesses" in his *pro se* motion for new trial on grounds of insufficient defense. In the postconviction petition, defendant also asserted ineffective assistance of appellate counsel for failing "to contest the errors listed in the post trial motions, submitted by the public defender, during the post trial hearings held on the motion for a

---

listed as a witness for the State, but who was not called to testify at trial.

[2] This is the spelling of the names in defendant's motion. Some of the names are spelled differently in other parts of the record.

new trial, submitted by the defendant on grounds of ineffective assistance of trial counsel." Defense counsel on appeal apparently interprets this rather convoluted statement as alleging that appellate counsel was ineffective for not arguing on direct appeal that the trial court failed to conduct a *Krankel* inquiry as to witnesses Jones, Craig, Smith, Baker, and McGee.

¶ 22 Defendant concedes on appeal that the trial court in the underlying proceedings conducted a proper *Krankel* inquiry as to potential witness Craig. However, he insists that the court failed to conduct the same inquiry regarding Jones, Smith, Baker, and McGee, and argues that his appellate counsel was arguably ineffective for failing to raise that issue on direct appeal. According to defendant, "the outcome of his direct appeal likely would have been different had the *Krankel* issue been raised"—specifically, he would have been entitled to a remand for a *Krankel* inquiry. Therefore, he concludes, he met his burden with respect to both prongs of *Strickland*: *i.e.*, it was arguable that counsel's performance fell below an objective standard of reasonableness and arguable that defendant was prejudiced.

¶ 23 We hold that defendant's claim has no arguable basis in law or fact because he was not arguably prejudiced by appellate counsel's failure to raise the *Krankel* issue on direct appeal. Even if there were a *Krankel* violation in the underlying proceedings, that in itself would not entitle defendant to relief under the Act. The Act requires a prisoner to assert that "in the proceedings which resulted in his or her conviction there was a substantial denial of his or her rights under the Constitution of the United States or of the State of Illinois or both." 725 ILCS 5/122-1(a)(1) (West 2012). To that end, defendant was required to "clearly set forth the respects in which [his] constitutional rights were violated." 725 ILCS 5/122-2 (West 2012). What defendant fails to appreciate is that he has no constitutional right to a *Krankel* inquiry; rather, he has a sixth amendment right to assistance of counsel. See *People v. Patrick*, 2011 IL 111666, ¶

41 ("The common law procedure developed in *Krankel* and subsequent cases is intended to promote consideration of *pro se* ineffective assistance claims in the trial court and to limit issues on appeal."). Indeed, "*Krankel* serves the narrow purpose of allowing the trial court to decide whether to appoint independent counsel to argue a defendant's *pro se* posttrial ineffective assistance claims." *Patrick*, 2011 IL 111666, ¶ 39. Therefore, defendant is not entitled to relief under the Act unless he can articulate the gist of an argument that his trial counsel was ineffective for not calling the witnesses.

¶ 24 Defendant insists that had appellate counsel raised th*e Krankel* issue on direct appeal, the result of the appeal would have been different in that he would have been granted an "automatic remand." *Strickland* says that prejudice means that "there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different." 466 U.S. at 694. In the context of ineffective assistance of appellate counsel claims, this means that "but for counsel's errors, there is a reasonable probability that the appeal would have been successful." *Petrenko*, 237 Ill. 2d at 497. Or, in other words, absent counsel's error, defendant's "sentence or conviction would have been reversed." (Internal quotation marks omitted.) *People v. Mack*, 167 Ill. 2d 525, 532 (1995). Even if defendant's appellate counsel had raised the issue on direct appeal—and even if we had agreed that there was *a Krankel* violation—defendant's convictions would not have been reversed. Nor would he have been granted a new trial. Instead, we would have remanded for the "limited purpose" of giving the trial court the opportunity to inquire into defendant'*s pro se* claims. *People v. Moore*, 207 Ill. 2d 68, 79 (2003).

¶ 25 To hold that defendant has arguably suffered prejudice from his counsel's failure to raise the *Krankel* issue on appeal would require us to speculate that a *Krankel* inquiry into defendant's naked allegations of ineffective assistance would have unearthed a valid sixth amendment claim.

Such speculation would be particularly inappropriate in this case, where defendant has never—either in the underlying proceedings or in this postconviction action—identified what he believes all of these witnesses would say or why they would be helpful to him.

¶ 26 Moreover, the record casts serious doubt on whether some of the witnesses would have assisted the defense. Jones, Smith, and Baker were each listed as witnesses for the State. Even if defendant's trial counsel failed to interview these witnesses, "a prosecution witness need not grant an interview to the defendant's attorney." *People v. Goff*, 137 Ill. App. 3d 108, 115 (1985). Additionally, the record indicates that defendant's counsel fought vigorously during hearings on motions *in limine* for permission to impeach Smith and Baker with evidence of their criminal convictions. Indeed, when it appeared that the State intended to call Baker at trial, defense counsel even proposed a non-I.P.I. jury instruction that Baker was a drug or alcohol abuser and that her testimony "must be examined and weighed by the jury with greater care." All of this suggests that counsel anticipated that Smith and Baker's testimony would have been detrimental to defendant and that counsel's actions were grounded in sensible trial strategy. See *Moore*, 207 Ill. 2d at 78 (in conducting a *Krankel* inquiry, the trial court need not appoint new counsel if it determines that the *pro se* claim of ineffective assistance "lacks merit or pertains only to matters of trial strategy"); *People v. Enis*, 194 Ill. 2d 361, 378 (2000) (counsel's decisions regarding which witnesses to call "enjoy a strong presumption that they reflect sound trial strategy, rather than incompetence").

¶ 27 With all this in mind, defendant was not arguably prejudiced by trial counsel's failure to interview or present the witnesses; therefore, appellate counsel's performance was not constitutionally deficient. See *People v. Stephens*, 2012 IL App (1st) 110296, ¶ 109 ("unless the

underlying issue has merit, there is no prejudice from appellate counsel's failure to raise an issue on appeal").

¶ 28 Our conclusion is supported by *People v. Harris*, 224 Ill. 2d 115 (2007), in which the supreme court affirmed summary dismissal of a postconviction petition. Among the defendant's claims of ineffective assistance, he alleged that his trial counsel failed to "interview and present the testimony of eight witnesses who would have helped his case." *Harris*, 224 Ill. 2d at 119. The defendant outlined in his own affidavit what he believed these witnesses would say, and he attached to the petition unsigned affidavits from each witness. *Harris*, 224 Ill. 2d at 119. The defendant explained that he had mailed the affidavits to the witnesses, but that none of them returned a signed affidavit. *Harris*, 224 Ill. 2d at 119. Among its bases for summarily dismissing the petition, the trial court concluded that defendant had not complied with section 122-2 of the Act (*Harris*, 224 Ill. 2d at 119-20), which provides that "[t]he petition shall have attached thereto affidavits, records, or other evidence supporting its allegations or shall state why the same are not attached" (725 ILCS 5/122-2 (West 2012)).

¶ 29 The supreme court affirmed summary dismissal of the petition because it did not state the gist of a meritorious claim. The court explained that "a claim that trial counsel failed to investigate and call a witness must be supported by an affidavit from the proposed witness." (Internal quotation marks omitted.) *Harris*, 224 Ill. 2d at 142. The court continued: "[i]n the absence of such an affidavit, a reviewing court cannot determine whether the proposed witness could have provided testimony or information favorable to the defendant, and further review of the claim is unnecessary." (Internal quotation marks omitted.) *Harris*, 224 Ill. 2d at 142. The court held that defendant's affidavit regarding what he believed the witnesses would say was insufficient. *Harris*, 224 Ill. 2d at 142.

¶ 30 We discern no reason to allow defendant in the present case to circumvent *Harris* merely by framing his ineffective assistance claim under the procedural requirements of *Krankel*. As in *Harris*, defendant has not supported his petition with witness affidavits. Therefore, further review of his postconviction claim regarding these witnesses was unnecessary. *Harris*, 224 Ill. 2d at 142.

¶ 31 For these reasons, defendant's claim of ineffective assistance of appellate counsel based on not raising the *Krankel* violation on direct appeal has no arguable basis in either fact or law.

¶ 32 The State's Closing Argument

¶ 33 Defendant next contends that his appellate counsel was ineffective for failing to argue on direct appeal that the State made improper comments during its closing arguments. The State's theory of the case, as articulated in both its opening statement and closing arguments, was that defendant battered Jansen in order to control her and teach her a lesson for attempting to leave him. During its rebuttal closing argument, the State asserted: "And as I said, this defendant taught her a lesson. Teach this defendant a lesson." Defendant objected. At a sidebar, the trial court ruled that the State could ask the jury to send a message to defendant that his illegal conduct would not be tolerated, but could not urge the jury to send a message to the community. The State then implored the jury on two more occasions to send a message to defendant. Defendant questioned the propriety of the State's comments again in his posttrial motions, which the trial court denied. Defendant's appellate counsel did not raise the issue on direct appeal.

¶ 34 Defendant now argues that the State improperly attempted to foster an us-versus-them mentality when it told the jury to "send a message" and "teach this defendant a lesson" by convicting him. He also argues that his counsel was arguably ineffective for failing to raise the issue on direct appeal because the evidence was closely balanced.

¶ 35 "Every defendant is entitled to a fair trial free from prejudicial comments by the prosecution." *People v. Billups*, 318 Ill. App. 3d 948, 958 (2001). "A prosecutor cannot use closing argument simply to inflame the passions or develop the prejudices of the jury without throwing any light upon the issues." (Internal quotation marks omitted.) *People v. Wheeler*, 226 Ill. 2d 92, 128-29 (2007). To that end, "it is improper for a prosecutor to utilize closing argument to forge an 'us-versus-them' mentality that is inconsistent with the criminal trial principle that a jury fulfills a nonpartisan role, under the presumption that a defendant is innocent until proven guilty." *Wheeler*, 226 Ill. 2d at 129. Nevertheless, the State is "afforded wide latitude in closing argument, and improper remarks will not merit reversal unless they result in substantial prejudice to defendant, in light of the context of the language used, its relationship to the evidence, and its effect on the defendant's right to a fair and impartial trial." *Billups*, 318 Ill. App. 3d at 958-59. When a defendant alleges that the State made improper remarks in closing argument, the question for the reviewing court is "whether or not the comments engender substantial prejudice against [the] defendant such that it is impossible to say whether or not a verdict of guilt resulted from them." *Wheeler*, 226 Ill. 2d at 123. "If the jury could have reached a contrary verdict had the improper remarks not been made, or the reviewing court cannot say that the prosecutor's improper remarks did not contribute to the defendant's conviction, a new trial should be granted." *Wheeler*, 226 Ill. 2d at 123.

¶ 36 Case law suggests that prosecutors walk a fine line when they invite the jury to send a message or teach the defendant a lesson. In *People v. Johnson*, 208 Ill. 2d 53, 78 (2003), the supreme court recognized that "courts have, in the past, both sanctioned and condemned prosecutors' exhortations to 'send a message' that crime in general will not be tolerated." However, the court declined to disavow cases which stand for the proposition that "*limited*

prosecutorial exhortations are proper where it is made clear to the jury that its ability to effect general and specific deterrence is dependent *solely* upon its careful consideration of the specific facts and issues before it." (Emphasis in original). *Johnson*, 208 Ill. 2d at 79. Contrarily, "where *** the prosecutor blurs that distinction by an extended and general denunciation of society's ills and, in effect, challenges the jury to 'send a message' by its verdict, he *** interjects matters that have no real bearing upon the case at hand, and he seeks to incite the jury to act out of undifferentiated passion and outrage, rather than reason and deliberation." *Johnson*, 208 Ill. 2d at 79.

¶ 37 The State's comments in closing arguments in the present case were on the proper side of the line that the supreme court has drawn. Specifically, the State confined its arguments to the facts of the case and did not attempt to inappropriately direct the jury's attention to larger societal issues. Nevertheless, we recognize that the appellate court in *People v. Hayes*, 353 Ill. App. 3d 578 (2004), asserted—without citation to any authority and without acknowledging the distinction made by the supreme court in *Johnson*—that "sending messages, whether to the defendant, to the police or to society, is not the jury's job." *Hayes*, 353 Ill. App. 3d at 586 (nonetheless holding that the State's improper argument did not constitute plain error).

¶ 38 We need not decide whether this statement in *Hayes* is a complete and accurate statement of the law, because we hold that defendant was not arguably prejudiced by the State's remarks. There was no threat that "the jury could have reached a contrary verdict" had the State not made the comments. *Wheeler*, 226 Ill. 2d at 123. To that end, the State never diverted attention away from the facts of the case, and it did not attempt to "incite the jury to act out of undifferentiated passion and outrage, rather than reason and deliberation." *Johnson*, 208 Ill. 2d at 79. Nor did the comments threaten to create an us-versus-them alignment between the jury and the State.

¶ 39 Defendant insists that he was arguably prejudiced by the State's comments because the case "essentially amounted to a credibility contest between the State's witnesses and the defense witnesses as to when [Jansen] received her injuries, and whether it was really [defendant] who injured her." It is true that various associates of defendant and Jansen offered conflicting testimony about the events leading up to and after the alleged battery. Nevertheless, two independent witnesses supported Jansen's story and cast doubt on defendant's theory. Specifically, Officer Schissel of the Rockford police department corroborated Jansen's testimony that she was not injured when she was robbed by Little C. Additionally, nurse Kennedy-Etes saw Jansen on Monday, March 24, 2008, at which time Jansen had a fresh wound on her head and numerous injuries "[f]rom head to toe." The presence of a fresh wound without scabbing strongly indicates that Jansen was injured more recently than the previous Thursday, contrary to defendant's theory.

¶ 40 The jury was tasked with assessing the credibility of the witnesses. See *People v. Tabb*, 374 Ill. App. 3d 680, 692 (2007) ("where the jury's determination is dependent upon eyewitness testimony, its credibility determinations are entitled to great deference and will be upset only if unreasonable"). Although there was conflicting testimony among the associates of defendant and Jansen as to when Jansen was injured and whether defendant caused those injuries, nurse Kennedy-Etes and Officer Schissel provided testimony that supported Jansen's version of events. Under these circumstances, we cannot conclude that, but for the State's comments in closing arguments, the jury arguably would have assessed credibility differently or reached a different result. Because the underlying claim was not meritorious, counsel was not ineffective for failing to raise the issue on direct appeal. *Stephens*, 2012 IL App (1st) 110296, ¶ 109. Consequently, defendant's postconviction claim has no arguable basis in law or fact.

¶ 41 Impeachment Evidence

¶ 42 Finally, defendant argues that the trial court erred in precluding him from impeaching State witness Woods regarding her pending prostitution charge, and that appellate counsel was ineffective for failing to raise the issue on direct appeal. In his reply brief, defendant represents that the charge was actually resolved several months before defendant's trial. Specifically, Woods pleaded guilty to a Class A misdemeanor for prostitution on June 13, 2008. Regardless, defendant maintains that he had a right to question Woods as to whether the reduction in the severity of her charge was related to her cooperation in defendant's forthcoming trial. Once again, defendant claims that he was arguably prejudiced by his counsel's failure to raise this issue on direct appeal because of the close nature of the evidence.

¶ 43 Prior to trial, defense counsel filed a motion *in limine* seeking permission to impeach Woods with evidence of four crimes: two Class 4 felony convictions for possession of a controlled substance, a Class A misdemeanor conviction for attempted obstruction of justice/destroying evidence; and a pending Class 4 felony charge for prostitution. The motion noted that the prostitution charge "may have been reduced to a class A misdemeanor on June 13, 2008." Significantly, defendant sought permission to impeach Woods under *People v. Montgomery*, 47 Ill. 2d 510 (1971) (impeachment by evidence of prior convictions). He did not seek to cross-examine Woods about her potential biases pursuant to *Davis v. Alaska*, 415 U.S. 308 (1974), and its progeny. These are two separate types of cross-examination. See *People v. Triplett*, 108 Ill. 2d 463, 475 (1985) ("[A] witness may be impeached by attacking his character by proof of conviction of an infamous crime. *** However, showing bias, interest, or motive to testify is also an accepted method of impeachment.").

¶ 44 At the hearing on his motion *in limine*, defendant again relied exclusively on *Montgomery*. Specifically, defense counsel informed the court that the prostitution charge had been reduced to a Class A misdemeanor. In an apparent attempt to categorize prostitution as a crime of dishonesty, defense counsel argued:

> "I believe that the offense of prostitution shows that an individual, be it male or female, is willing to sell their body or at least rent their body out for a short period of time for money. I believe that indicates that the individual, male or female, is willing to do almost anything for their benefit, their benefit being receiving the money. And if you are going to commit a crime in order to be paid for that crime, then you would be more than willing to lie or fabricate on the stand in order to either enhance your own position or to prevent detrimental action being made against you."

In response, the State argued that "[t]he Supreme Court has held that a conviction for prostitution is not a basis for impeachment." In an apparently jovial reply, defense counsel stated: "We would ask your Honor to overrule the Illinois Supreme Court and find otherwise, sir." The court then denied defendant's motion *in limine* as to the prostitution charge because it was a misdemeanor. However, the court granted defendant's motion as to the other three convictions.

¶ 45 The issue of Woods' prostitution charge came up again in passing at another status hearing. The State requested permission to impeach defense witness Clay with the details of his recent Class 4 felony conviction for criminal damage to government supported property. The State observed that Clay had been convicted of that offense on September 10, 2008, and urged that it would "show[] a great bias, in that he is on the stand after being sentenced." In response to the State's request to elicit details of the sentencing, defense counsel indicated that he would have no objection so long as he was allowed to "bring out the fact that [Woods] and [Jansen]

have cases pending" to show their bias. The court indicated that those were "separate issues" and reserved ruling on the State's motion.

¶ 46 From our review of the record, it does not appear that defendant raised the issue of the prostitution conviction again. Instead, when Woods testified at trial, the State elicited on direct examination that she had been convicted of two felony offenses for possession of a controlled substance. On cross-examination, defendant elicited that Woods had also been convicted of attempted obstruction of justice for destroying evidence. He did not attempt to impeach her, either under *Montgomery* or *Davis*, regarding the prostitution charge or conviction.

¶ 47 Defendant now appears to concede that the misdemeanor prostitution conviction was not admissible under *Montgomery*. Specifically, he states in his reply brief, "[*People v. Sawyer*, 48 Ill. 2d 127 (1971)] holds that a prostitution conviction is generally not admissible to impeach a witness, but that holding was in the context of whether a misdemeanor conviction is a crime of dishonesty, such that it could be admissible under [*Montgomery*]. *** That is not the issue here, though." Instead, defendant argues that the trial court should have allowed him to cross-examine Woods under *Davis* and its progeny to explore her potential bias in favor of the State due to the reduction of her charge.

¶ 48 Our resolution of this issue is simple. Defendant never attempted to cross-examine Woods under *Davis*. While counsel made a passing reference to the possibility of cross-examining Woods in this manner, he never requested a ruling as to whether he could do so. It is not arguable that the trial court improperly precluded defendant from pursuing this avenue of impeachment because the issue was never properly brought to the court's attention. Nor does defendant argue in this appeal that his trial counsel was ineffective for failing to cross-examine

Woods about her potential bias. Therefore, defendant's postconviction claim on this point has no arguable basis in law or fact.

¶ 49 III. CONCLUSION

¶ 50 For the reasons stated, we affirm the trial court's order summarily dismissing defendant's postconviction petition.

¶ 51 Affirmed.