

SIXTH DIVISION
May 8, 2015

No. 1-12-3134

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).

IN THE
APPELLATE COURT OF ILLINOIS
FIRST JUDICIAL DISTRICT

THE PEOPLE OF THE STATE OF ILLINOIS,)	Appeal from the
)	Circuit Court of
Plaintiff-Appellee,)	Cook County.
)	
v.)	No. 07 CR 7156
)	
OLIVER CRAWFORD,)	Honorable
)	Diane Gordon Cannon,
Defendant-Appellant.)	Judge Presiding.

JUSTICE LAMPKIN delivered the judgment of the court.
Presiding Justice Hoffman and Justice Hall concurred in the judgment.

O R D E R

¶ 1 **Held:** The trial court erred in the first-stage dismissal of defendant’s postconviction petition.

¶ 2 Defendant Oliver Crawford appeals from the trial court’s dismissal of his postconviction petition at the first stage of postconviction proceedings and denial of his motion to reconsider. On appeal, defendant argues his petition was not frivolous or patently without merit and should have advanced to the second stage of postconviction proceedings. In his petition, defendant

argues that (1) new evidence provided by witnesses supports his claim of actual innocence; (2) trial counsel rendered ineffective assistance when he (a) failed to call a known witness to impeach the State's key witness, and (b) made inappropriate promises and gave inaccurate advice to induce defendant to waive a jury trial; and (3) trial and appellate counsel rendered ineffective assistance when they failed to preserve for review defendant's due process claim, which was based on defendant's assertion that the trial court mistakenly recollected the evidence concerning a central issue in a case where the evidence was closely balanced.

¶3 We do not find the petition to be based entirely on indisputably meritless legal theories or fanciful factual allegations. Therefore, we reverse the trial court's judgment and remand this case for further proceedings.

¶4 I. BACKGROUND

¶5 Defendant Oliver Crawford was arrested and charged for various offenses stemming from a drive-by shooting that occurred about noon on February 1, 2004, in front of a liquor store on East 58th Street in Chicago. The shooting fatally wounded Christopher Dorbin and injured Desi Jones, Kentrae Wade and Carol Holt. Codefendants Ricardo Lee and Chad Johnson were also charged with various offenses arising from the shooting.

¶6 At defendant's bench trial in September and October 2007, shooting victims Jones and Wade identified defendant and codefendant Johnson as the two shooters in the car. Wade also identified codefendant Lee as the driver of the car. Victim Holt was unable to identify anyone inside the car. The State's witnesses presented testimony that victims Jones and Wade and defendant and codefendants Lee and Johnson were members of the Gangster Disciples street gang. However, Jones and Wade belonged to a rival sect of the gang that was at "war" with the sect to which defendant, Lee and Johnson belonged. Witness Stacey Murray was also a member

of the Gangster Disciples and was driving toward the liquor store when he heard several gunshots and saw a car speeding down 58th Street. As the car drove past him, he saw Lee driving with Johnson and defendant as passengers.

¶7 Defendant presented five witnesses and also testified himself. Solomon Bey testified that he was standing near victim Dorbin at the time of the shooting, was unable to see the shooters, but did see that two people fired guns from the car while one person drove. Juliette Washington testified that she had dated Radsheen Shephard around the time of the shooting and he admitted that he shot and killed Dorbin. Washington testified that she told defendant's parents and attorney about Shephard's admission. Defendant's alibi witnesses consisted of his cousin Shirley Crite, his relative Dominique Manuel, and his sister Annette Crawford. They testified that Manuel and defendant stayed overnight at Crite's home in Streamwood the day before the shooting and defendant left Crite's home after 1 p.m. on the date of the shooting. Defendant denied being a member of the Gangster Disciples or shooting people in front of the liquor store in Chicago. He testified that he was at Crite's home in Streamwood at the time of the shooting and thereafter returned to his Streamwood apartment before going to visit his hospitalized grandmother. He also testified that he did not socialize with codefendants Johnson or Lee in January or February 2004.

¶8 Following the bench trial, defendant was convicted of one count of first degree murder and three counts of aggravated discharge of a firearm. Defendant was sentenced to a 25-year prison term for first degree murder, and three 5-year terms for aggravated discharge of a firearm, to be served consecutively.

¶9 On direct appeal, defendant argued that he was denied a fair trial because the court failed to fairly consider his alibi defense. This court affirmed defendant's convictions. *People v.*

Crawford, No. 1-08-0917 (Sept. 10, 2010) (unpublished order under Supreme Court Rule 23).

¶10 In his March 2012 postconviction petition, which was filed through private counsel, defendant alleged that new evidence established his innocence of this crime. This new evidence consisted of the recovery of one of the guns used in the crime and two witnesses' conversations with Desi Jones, who allegedly admitted to falsely implicating defendant in this offense.

Defendant also alleged that trial counsel rendered ineffective assistance by: pushing defendant to waive a jury trial based on incomplete and inaccurate information; failing to prepare defendant to testify at the trial; failing to locate, interview, and call necessary witnesses for the trial; failing to subpoena telephone records to support defendant's alibi defense; failing to investigate and discover evidence to impeach the State's witnesses; failing to contact a gas station attendant and defendant's neighbor to support defendant's alibi; failing to preserve for appeal issues concerning defendant's unlawful arrest; and improperly stipulating to certain evidence. In addition, defendant alleged that the trial court denied him due process when it relied on facts not in evidence concerning the education level of defendant's alibi witnesses and ignored credible alibi testimony.

¶11 According to the petition, defendant alleged, *inter alia*, that his trial counsel was aware of the exculpatory testimony of codefendant Lee, Lafayette Singleton and Travon Wesley before the trial. Specifically, codefendant Lee had told defendant that Lee would testify about the other occupants of the car because Lee would hate to see defendant convicted of something he did not do. In addition, Lafayette Singleton had admitted to defendant's father that he (Singleton) was driving the car during the shooting and did not know "they" were going to start shooting. Furthermore, Travon Wesley had told defendant's mother before the trial that the actual shooters went to Wesley's home after the shooting and told Wesley what had occurred. Although

defendant's mother brought Wesley to counsel's office to tell his story, counsel did not present Wesley as a witness at the trial. Defendant also stated that codefendant Lee, Singleton and Wesley were incarcerated and defendant was in the process of contacting their attorneys to obtain their affidavits to support the claim that defendant's trial counsel failed to interview them and call them as witnesses at the trial.

¶12 The affidavits of defendant, Arthur Randle, and Michael Jones were attached to the petition. In defendant's affidavit, he asserted only that the information contained in his petition was truthful and accurate.

¶13 Arthur Randle's affidavit was signed but undated by Randle and notarized on May 19, 2009. Arthur Randle asserted that he had known Desi Jones and defendant for over ten years. In the Fall of 2004, he encountered Desi outside a store and talked to him about the shooting. When Randle confronted Desi about falsely implicating defendant, Desi responded, "I ain't sayin' he shot me, but he [defendant] knows who did." Randle asserted that he gave defendant's attorney this information, but Randle was never called at trial to testify.

¶14 In Michael Jones' May 2009 affidavit, he stated that he was Desi Jones' cousin and had known defendant since Michael was 12 years old. About two months after the shooting, Michael heard that Desi had been shot and was looking for him. Michael found Desi coming out of a store near 58th and Calumet and talked to him. When Michael asked Desi if defendant had shot him, Desi said that he knew who shot him and defendant did not do it. Desi said that he would not reveal who shot him and he had implicated defendant because he was a "threat" and needed to be off the streets. When Michael encountered Desi about one month later at a mall and confronted him about his false implication of defendant, Desi questioned why Michael was concerned about defendant, seemed embarrassed and did not want to discuss the matter.

¶15 On June 7, 2012, the trial court summarily dismissed the petition at the first stage of the postconviction proceedings. In a 17-page written order, the trial court concluded that the issues raised and presented by defendant were waived or frivolous and patently without merit because the petition lacked factual support, contained bald, conclusory allegations, was devoid of case law, and was not supported by necessary or adequate affidavits. Concerning defendant's claim of actual innocence based on newly discovered evidence, the court found that defendant failed to present anything in his petition or any attachment to support this claim. Specifically, defendant offered mere conclusions and conjecture when he argued that one of the guns used in the drive-by shooting was recovered in 2009 when it was used by Roderick Clark and a proper investigation might have shown who possessed the gun after the shooting and thereby exculpated defendant. Furthermore, regarding the missing affidavits from codefendant Lee and witnesses Singleton and Wesley, defendant failed to explain why he had not contacted the attorneys of those incarcerated witnesses, how he came to know the substance of their potential testimony, and whether they would actually be willing to testify on defendant's behalf. Furthermore, the attached affidavits of Michael Jones and Randle concerning Desi Jones' alleged recantation contained inadmissible hearsay and Desi Jones' alleged statements, which were made before the trial, were not admissible as statements against the declarant's penal interest.

¶16 Concerning defendant's allegations of ineffective assistance of counsel, the court found, *inter alia*, that defendant failed to attach affidavits to support his claims that: Radsheen Shepard would incriminate himself as one of the shooters and exculpate defendant; defendant's father would testify that Lafayette Singleton admitted to driving the car during the shooting; and Officer O'Brien would testify that the murder victim, Dorbin, did not identify defendant as the shooter. The court also concluded that counsel's decision not to call Travon Wesley as a witness

was reasonable trial strategy.

¶17 Finally, the court addressed defendant's claim that trial counsel coerced him into waiving a jury trial by improperly or inaccurately advising him that a jury would likely convict him because the jury would see photographs of the victim's body, defendant's sentence would be shorter if he opted for a bench trial, and the judge would be sympathetic to defendant. The court concluded that counsel's advice was a matter of trial strategy. The court also concluded that *res judicata* barred defendant's claim that the trial court had relied on facts not in evidence concerning the alibi witnesses and the record established that the trial court did not ignore, but rather deemed incredible, the testimony of the alibi witnesses.

¶18 In July 2012, defendant retained new postconviction counsel and moved the court to reconsider the summary dismissal, arguing that previously retained postconviction counsel did not provide reasonable assistance. Defendant agreed with the trial court's conclusions that his petition was deficient but argued that previous postconviction counsel failed to obtain readily available affidavits from defendant, his wife, and his mother and father to support his claims of new evidence and ineffective assistance of counsel; failed to adequately explain the reasons why some affidavits were missing or fully develop the facts concerning the exculpatory witnesses' potential testimony about the identity of the actual shooters; failed to attach available copies of police reports; and failed to properly frame the issues. Defendant asked that new postconviction counsel be given time to conduct the proper investigations necessary to support his potentially meritorious claims. Defendant attached to this motion the affidavits of his wife and father, and a letter from codefendant Lee.

¶19 In her affidavit, defendant's wife, Katinia Battie-Crawford, summarized her interactions and conversations with defendant's previous postconviction counsel and their efforts to

investigate defendant's case. She stated that previous counsel failed to keep their promise to conduct and complete an investigation to obtain information to support defendant's petition, failed to contact the witnesses that were available and willing to testify, failed to update the affidavits of Michael Jones or Arthur Randle; gave her incorrect information and legal advice, and failed to attach available supporting documents—police reports, affidavits, and codefendant's Lee's letter to defendant—to the petition.

¶20 In his affidavit, defendant's father, Oliver Crite, stated that in May 2005, he visited Lafayette Singleton at the jail. Singleton told him that defendant was not involved with the shooting and was nowhere near the scene of the crime. Singleton did not say who was involved in the shooting or what vehicle was used, and refused to repeat this information to defendant's counsel. Mr. Crite gave this information to defendant's counsel, who disregarded it.

¶21 In an undated letter from codefendant Lee, who was incarcerated, Lee stated that he loved defendant, "never meant for anybody to go down for something somebody else did," and "never meant for anything to happen to [defendant]." Lee asked defendant to "please forgive [him] for other people['s] mistakes" and he "never meant for this to happen."

¶22 On September 12, 2012, defendant obtained leave to supplement his motion to reconsider with (1) Arthur Randle's updated July 25, 2012 affidavit, which was now dated by Randle and added that he was willing to testify at an evidentiary hearing; (2) forensic reports related to one of the guns that was used in the drive-by shooting and recovered in 2009 when it was used by someone named Roderick Clark; and (3) Travon Wesley's August 2012 affidavit. In his affidavit, Wesley averred that the actual shooters were Bruce and Rasheen and they went to Wesley's home after the drive-by shooting. They wore hoodies, gloves and masks and emptied their guns when they fired at the victims. Wesley stated that the guns used in the offense ended

up “back on the block” after the shooting and the police recovered both guns from different people in separate incidents. Wesley eventually went to prison on a gun case. When he was released, he told defendant’s family what he knew about the murders.

¶23 On September 25, 2012, the trial court denied the motion to reconsider, and defendant appealed.

¶24

II. ANALYSIS

¶25 On appeal, defendant contends that his postconviction petition should have advanced to a stage-two proceeding because he raised arguable claims that (1) he is innocent of this crime based on new evidence from Wesley and codefendant Lee about the identity of the actual offenders and new evidence from Michael Jones about Desi Jones’ false implication of defendant; (2) trial counsel rendered ineffective assistance by failing to call Arthur Randle, a known and available witness, to impeach Desi Jones’ testimony identifying defendant as one of the shooters; (3) trial counsel rendered ineffective assistance when he used inappropriate promises and gave inaccurate advice to induce defendant to waive a jury trial; and (4) counsel rendered ineffective assistance by failing to preserve defendant’s claim that the trial court violated his due process rights when it mistakenly recollected crucial evidence.

¶26 The Illinois Post-Conviction Hearing Act (Act), 725 ILCS 5/122-1 *et seq.* (West 2010), provides a means by which a defendant may challenge his conviction for “substantial deprivation of federal or state constitutional rights.” *People v. Tenner*, 175 Ill. 2d 372, 378 (1997).

Postconviction relief is limited to constitutional deprivations that occurred at the original trial. *People v. Coleman*, 183 Ill. 2d 366, 380 (1998). A postconviction proceeding is not an appeal of the defendant’s underlying judgment but, rather, is a collateral attack on the judgment. *People v. Evans*, 186 Ill. 2d 83, 89 (1999). “The purpose of [a postconviction] proceeding is to allow

inquiry into constitutional issues relating to the conviction or sentence that were not, and could not have been, determined on direct appeal.” *People v. Barrow*, 195 Ill. 2d 506, 519 (2001).

Thus, *res judicata* bars consideration of issues that were raised and decided on direct appeal, and issues that could have been presented on direct appeal, but were not, are considered forfeited.

People v. Blair, 215 Ill. 2d 427, 443-47 (2005).

¶27 Except in cases where the death penalty has been imposed, proceedings under the Act are divided into three distinct stages. *People v. Gaultney*, 174 Ill. 2d 410, 418 (1996). At the first stage, the trial court must examine the petition independently and summarily dismiss it if it is frivolous or patently without merit. 725 ILCS 5/122-2.1 (West 2010); *Gaultney*, 174 Ill. 2d at 418. A petition is frivolous or patently without merit only if it has no arguable basis either in law or in fact. *People v. Hodges*, 234 Ill. 2d 1, 11-12 (2009). A petition lacking an arguable basis in law or fact is one “based on an indisputably meritless legal theory or a fanciful factual allegation.” *Id.* at 16. A claim completely contradicted by the record is an example of an indisputably meritless legal theory. *Id.* Fanciful factual allegations include those that are fantastic or delusional. *Id.* at 17. The unlikelihood of a factual proposition does not make that proposition fantastic or delusional because the unlikely can turn out to be true. *Id.* at 13 & n.5. At this initial stage of the postconviction proceeding, there is no involvement by the State, and the circuit court acts strictly in an administrative capacity by screening out those petitions which are without legal substance or are obviously without merit. *People v. Rivera*, 198 Ill. 2d 364, 373 (2001).

¶28 Because most petitions at the first stage are drafted by *pro se* defendants, the threshold for survival is low. *People v. Tate*, 2012 IL 112214, ¶ 9 (2012). However, even if the first-stage petition was prepared by an attorney, the low threshold for survival still applies. *Id.* ¶ 10-11. To

survive dismissal at the first stage, the petition “need only present the gist of a constitutional claim” which is “a low threshold” that requires the petition to contain only a limited amount of detail. *Gaultney*, 174 Ill. 2d at 418. Moreover, a petition need not make legal arguments or cite to legal authority. *People v. Delton*, 227 Ill. 2d 247, 254 (2008). Section 122-2 of the Act states that the 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 2010).

¶29 If not summarily dismissed, the petition proceeds to the second stage, at which an indigent defendant is entitled to appointed counsel, the petition may be amended, and the State may answer or move to dismiss the petition. 725 ILCS 5/122-4, 122-5 (West 2010); *Gaultney*, 174 Ill. 2d at 418. At the second stage, the petition may be dismissed “when the allegations in the petition, liberally construed in light of the trial record, fail to make a substantial showing of a constitutional violation.” *People v. Hall*, 217 Ill. 2d 324, 334 (2005). The court’s focus during second-stage review is the legal sufficiency of the petition, and the court may not engage in any fact-finding or credibility determinations, but must take as true all well-pleaded facts. *People v. Domagala*, 2013 IL 113688, ¶ 35. A postconviction petitioner is not entitled to an evidentiary hearing as a matter of right; rather, to warrant an evidentiary hearing, the allegations in the petition must be supported by the record or by accompanying affidavits. *Coleman*, 183 Ill. 2d at 381. A petition that is not dismissed at the first or second stage advances to the third stage, at which an evidentiary hearing is held. See 725 ILCS 5/122-6 (West 2010); *Gaultney*, 174 Ill. 2d at 418. Dismissal of a petition at the first or second stage is reviewed *de novo*. *People v. Whitfield*, 217 Ill. 2d 177, 182 (2005); *Tate*, 2012 IL 112214, ¶ 10.

¶30 Although the trial court explicitly dismissed defendant’s petition as frivolous and patently without merit, defendant contends the court applied the wrong standard to the dismissal.

Defendant contends the court's analysis indicates that it actually used the higher standard applicable to second-stage petition proceedings. Even assuming, *arguendo*, that the trial court applied the wrong standard, such error would not require a reversal and remand by this court. Our review is *de novo*, and we may affirm on any proper ground a procedurally proper summary dismissal that was based on an improper ground. See *People v. Quigley*, 365 Ill. App. 3d 617, 619 (2006); *People v. Dominguez*, 366 Ill. App. 3d 468, 473 (2006). Here, the dismissal was procedurally proper because the trial court summarily dismissed the petition within 90 days and without the input of any party. See *Id.* Thus, we may apply the proper standard in the first instance and affirm if, in accordance with that standard, the summary dismissal is justified.

¶31 In determining whether a defendant was denied the effective assistance of counsel, we apply the familiar two-prong test set forth in *Strickland v. Washington*, 466 U.S. 668 (1984), and adopted by our supreme court in *People v. Albanese*, 104 Ill. 2d 504 (1984). To prevail on a claim of ineffective assistance of counsel, a defendant must show both that counsel's performance was deficient and that the deficient performance prejudiced the defendant. *Strickland*, 466 U.S. at 687. However, first-stage postconviction petitions alleging ineffective assistance of counsel are judged by a lower pleading standard than are such petitions at the second stage of the proceedings. Whereas at the second stage, the issue is whether the defendant has demonstrated or proved ineffective assistance, a different, more lenient formulation applies at the first stage. *People v. Coleman*, 2012 IL App (4th) 110463, ¶ 49. At the first stage, the court applies not the *Strickland* test but the arguable *Strickland* test. *Tate*, 2012 IL 112214 ¶ 20. Specifically, a petition alleging ineffective assistance of counsel may not be summarily dismissed if (1) it is arguable that counsel's performance fell below an objective standard of

reasonableness and (2) it is arguable that the defendant was prejudiced. *Hodges*, 234 Ill. 2d at 17.

¶32 Among defendant's myriad claims of ineffective assistance, he alleged that trial counsel failed to present the known, available testimony of Arthur Randle to counter Desi Jones' trial testimony identifying defendant as one of the shooters. According to his affidavit attached to the original petition, Randle stated that trial counsel did not call him to testify despite Randle informing counsel, prior to trial, that Randle had confronted Desi for falsely identifying defendant as one of the shooters and Desi had responded, "I ain't sayin' he shot me, but he [defendant] knows who did." According to the record, the circuit court dismissed this ineffective assistance claim because Randle's affidavit concerning Desi's alleged recantation contained inadmissible hearsay and Desi's alleged statements would not have been admissible as statements against the declarant's penal interest.

¶33 We disagree with the trial court's conclusion that defendant's ineffective assistance claim based on Randle's affidavit had no arguable basis in law. In general, prior inconsistent statements are admissible solely for impeachment purposes, not as substantive evidence of the truth of the matter asserted. *People v. Olinger*, 176 Ill. 2d 326, 360 (1997); *People v. Collins*, 49 Ill. 2d 179, 194 (1971); *People v. Thomas*, 354 Ill. App. 3d 868, 884-85 (2004); see also M. Graham, Cleary & Graham's Handbook of Illinois Evidence § 801.9 (5th ed.1990) (the statement must truly be inconsistent with the trial testimony and deal with a matter that is more than collateral, and a proper foundation must be laid). At the first stage of a postconviction proceeding, the only issue before the trial court was whether defendant's claim—that he was deprived of the constitutional right to effective counsel through the impeachment of the State's witnesses with known evidence—was frivolous or patently without merit.

¶34 The contents of Randle’s affidavit are neither fantastic nor delusional, and it is not apparent from the record that defendant would not have been able to lay an adequate foundation to admit Randle’s testimony about Desi’s alleged prior inconsistent statement for impeachment purposes. We conclude that Randle’s affidavit was sufficient to support defendant’s ineffective assistance claim based on counsel’s alleged failure to present known testimony to refute a key State witness. It is at least arguable that defendant was prejudiced by the lack of this witness, and that defense counsel’s performance fell below an arguable standard of reasonableness. Accordingly, defendant’s original petition was sufficient to advance to the second stage of postconviction proceedings. We express no opinion as to whether defendant’s petition and affidavits ultimately will support a substantial showing of a constitutional violation. That is a second-stage issue.

¶35 We reverse the judgment of the circuit court and remand the entire petition for further proceedings. As noted above, defendant’s petition raises several other claims; however, because we reverse the court’s dismissal on this issue, we need not address the other issues raised by defendant’s petition or motion to reconsider and remand the entire petition for further proceedings under the Act. *People v. Rivera*, 198 Ill. 2d 364, 374 (2001) (partial summary dismissals of petitions are not permitted during the first stage of postconviction proceedings).

¶36 Defendant additionally asks that we assign this case to a different judge on remand, arguing that the judge “displayed neglect and ill-will in [defendant’s] post-conviction proceedings, and displayed animosity in the closely related trial of [codefendant Johnson].”

¶37 A defendant has no absolute right to a substitution of judge in a postconviction proceeding. *People v. Harvey*, 379 Ill. App. 3d 518, 522 (2008). Moreover, the judge who presided over the defendant’s criminal trial should hear his postconviction petition unless it is

shown that the judge is “substantially prejudiced.” *Id.* Disqualifying a judge for cause is not a judgment to be lightly made. *People v. Patterson*, 192 Ill. 2d 93, 134 (2000). The defendant must show something more than simply that the judge presided over the criminal trial (*People v. Reyes*, 369 Ill. App. 3d 1, 25 (2006)), and a judge’s prior rulings in the case rarely, if ever, can form the basis of a recusal motion (*Liteky v. United States*, 510 U.S. 540, 555 (1994)). A defendant must demonstrate “animosity, hostility, ill will, or distrust,” or “prejudice, predilections or arbitrariness.” *Reyes*, 369 Ill. App. 3d at 25. It is presumed that judges will be impartial, but they must ultimately determine whether they can “hold the balance nice, clear and true between the State and the accused.” *Harvey*, 379 Ill. App. 3d at 522. The burden of overcoming the presumption of impartiality rests on the party seeking to show prejudice, who must present evidence of personal bias from extrajudicial sources and prejudicial conduct at trial. *In re Marriage of Hartian*, 222 Ill. App. 3d 566, 569 (1991).

¶38 First, defendant contends the judge drew inappropriate conclusions to summarily dismiss his first-stage petition and, thus, has prejudged the merits of many of his claims. We disagree. That allegation is not sufficient to suggest that the trial judge is unable to hold the balance “nice, clear and true” between defendant and the State. Moreover, the trial judge’s prior findings and rulings on the postconviction petition and motion to reconsider are not a valid basis for a recusal motion. On remand for stage-two proceedings, defendant, if indigent, is entitled to appointed counsel and his petition may be amended. Moreover, the trial court’s 17-page dismissal order provides defendant with valuable guidance to correct the many deficiencies in his original petition.

¶39 Defendant also argues that the trial judge is biased against him because she neglected to read and refused to consider the merits of defendant’s timely motion to reconsider and

supplemental filing, which contained the supporting evidence the judge previously ruled had been lacking. According to defendant, if the judge had truly read those documents, she would not have stated that she was denying the motion to reconsider based on the same reasoning that supported her earlier denial of the postconviction petition.

¶40 We disagree with defendant that the postconviction court's rationale for denying the petition and motion to reconsider justify reassignment to a different judge on remand. At most, the court's rationale shows that it mistakenly applied an inappropriate, heightened analysis to defendant's first-stage petition, which was filed through private counsel. It does not demonstrate that the postconviction court held "animosity, hostility, ill will, or distrust" or "prejudice, predilections or arbitrariness" toward defendant. See *Reyes*, 369 Ill. App. 3d at 25.

¶41 Finally, defendant asserts that the trial judge has "developed animosity toward the case as a whole," and cites as support codefendant Johnson's direct appeal and this court's decision in *People v. Johnson*, 2012 IL App (1st) 091730, which reversed Johnson's conviction and remanded the cause for a new trial before a different judge. According to defendant, the *Johnson* court's decision to remand to a different judge stemmed from the *Johnson* court's findings that the judge displayed annoyance toward Johnson's defense counsel before the jury and was unnecessarily preemptive and dismissive toward Johnson's defense counsel before the jury during counsel's examination of a witness.

¶42 The concerns at issue in *Johnson* involved the jury's perception of the trial judge's statements to and treatment of Johnson's counsel during the trial, and neither Johnson nor his counsel is involved in the litigation of this case. Consequently, defendant has not met his burden to show a bias that demonstrates animosity, hostility, ill will, distrust, prejudice, predilections or arbitrariness toward him.

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¶43 For the foregoing reasons, we reverse the judgment of the circuit court and remand the cause back to the original trial court for further proceedings under the Act.

¶44 Reversed and remanded.