

**NOTICE**

This Order was filed under Supreme Court Rule 23 and is not precedent except in the limited circumstances allowed under Rule 23(e)(1).

2025 IL App (4th) 231515-U

NO. 4-23-1515

IN THE APPELLATE COURT

OF ILLINOIS

FOURTH DISTRICT

**FILED**

March 11, 2025  
Carla Bender  
4<sup>th</sup> District Appellate  
Court, IL

THE PEOPLE OF THE STATE OF ILLINOIS,	)	Appeal from the
Plaintiff-Appellee,	)	Circuit Court of
v.	)	McLean County
HAMMET DEONDRE BROWN,	)	No. 18CF652
Defendant-Appellant.	)	
	)	Honorable
	)	John Casey Costigan,
	)	Judge Presiding.

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JUSTICE STEIGMANN delivered the judgment of the court.

Justices Lannerd and Vancil concurred in the judgment.

**ORDER**

¶ 1 *Held:* The appellate court reversed the trial court’s first-stage dismissal of defendant’s postconviction petition because defendant stated the gist of a constitutional claim.

¶ 2 In February 2021, following a bench trial, defendant, Hammet Deondre Brown, was found guilty of two counts of first degree murder (720 ILCS 5/9-1(a)(1) (West 2018)) and two counts of attempted murder (*id.* § 8-4, 9-1). Later, the trial court sentenced defendant to (1) natural life in prison for each of the murders and (2) 31 years in prison for each of the attempted murders, with all the sentences to run consecutively. Defendant appealed, and we affirmed his convictions and sentences. *People v. Brown*, 2022 IL App (4th) 210504-U, ¶ 1.

¶ 3 In June 2023, defendant *pro se* filed a petition pursuant to the Post-Conviction Hearing Act (Act) (725 ILCS 5/122-1 *et seq.* (West 2022)), alleging, among other things, that trial counsel provided ineffective assistance by causing defendant “to waive his right to a jury trial by

advising him that a bench trial would be better because the judge owed trial counsel a favor and the judge would have information not available to a jury.”

¶ 4 The trial court summarily dismissed the petition, concluding that both claims were frivolous and patently without merit.

¶ 5 Defendant appeals, arguing the trial court erred by summarily dismissing his postconviction petition because he stated the gist of a constitutional claim.

¶ 6 Because we agree with defendant, we reverse and remand for further proceedings pursuant to the Act.

## ¶ 7 I. BACKGROUND

### ¶ 8 A. The Charges

¶ 9 In July 2018, the State charged defendant with six counts of first degree murder (720 ILCS 5/9-1(a)(1), (a)(2) (West 2018)) and two counts of attempted murder (*id.* § 8-4, 9-1) arising out of a June 2018 shooting incident at a backyard barbecue that left two people dead and two injured. Specifically, the State alleged that defendant shot and killed Steven Alexander and Teneshiea Brown and shot and injured Tyree Jones and Kenleia Sims.

### ¶ 10 B. The Jury Trial Waiver

¶ 11 In February 2021, the trial court conducted a hearing, at which defendant waived his right to a jury trial. The following colloquy occurred:

“MR. ZALCMAN [(DEFENSE ATTORNEY)]: We’re prepared to waive jury today and ask for a bench trial to start on Monday.

THE COURT: Okay.

MR. ZALCMAN: [Defendant] hasn’t signed his waiver yet, but we have—  
may I approach?

THE COURT: You may. If jury is waived you are prepared for Monday; is that correct, Mr. Zalcman?

MR. ZALCMAN: Yes, Your Honor.

THE COURT: Assuming this does not change the State's position in terms of timing on anything.

MS. KOLL [(ASSISTANT STATE'S ATTORNEY)]: No. In fact, Mr. Zalcman gave us the courtesy of letting us know that was a possibility. So we have tentatively been planning for that possibility. But we're ready to begin first thing Monday morning with evidence.

THE COURT: All right. [Defendant], I am showing you a document that appears to have your signature on it. And that is your signature; is that correct?

DEFENDANT: Yes, sir.

THE COURT: All right. And you understand this document to be a formal waiver of a jury but maintaining your plea of not guilty in this case; is that right?

DEFENDANT: Yes, sir.

THE COURT: All right. You understand that in this case you are entitled to a jury trial. A jury is composed of 12 citizens that would be selected by you, your attorney, the State's Attorney. They would be seated in the jury box. They would listen to the evidence, and they would determine whether the State has proven you guilty beyond a reasonable doubt. Their decision on your guilt must be unanimous. And you understand by—you understand that by signing this document and me accepting it as a knowing and voluntary waiver that you are waiving your right to that jury trial? You understand that; is that right?

DEFENDANT: Yes, Your Honor.

THE COURT: You also understand that once I accept this document as a knowing and voluntary waiver that it's accepted for good; meaning, you can always ask, but the chances of going back and saying hang on, I've now changed my mind, I want a jury trial that's likely not going to happen? And you understand that; is that right?

DEFENDANT: Yes, sir.

THE COURT: Okay. Do you have any questions on your right to a jury trial or waiving a jury trial?

DEFENDANT: No, sir.

THE COURT: Okay. You've had an opportunity to talk with [your attorney] regarding this decision?

DEFENDANT: Yes, sir.

THE COURT: All right. And you understand the decision as to whether to waive jury is your decision and your [decision] alone? You understand that?

DEFENDANT: Yes, sir.

THE COURT: All right. And you're asking me to waive your right to a jury trial and set this matter for a bench trial?

DEFENDANT: Yes, sir.

THE COURT: You also understand that with regard to the timing on things that we are set for a jury trial to start on Monday. But with the Court's scheduling if we go ahead with the bench I will go ahead and start the trial on Monday as well? And you understand that as well?

DEFENDANT: Yes, sir.

THE COURT: Okay. And again, you're asking me to waive your right to a jury?

DEFENDANT: Yes, sir.

THE COURT: Okay. The Court will find a knowing and voluntary waiver of right to jury. The matter will be set for a bench trial to commence on Monday. Okay."

¶ 12 C. The Bench Trial and Posttrial Proceedings

¶ 13 In February 2021, the trial court conducted defendant's bench trial, at the conclusion of which the court found defendant guilty of all counts.

¶ 14 In March 2021, defendant, through counsel, filed a motion for a new trial, raising multiple claims of ineffective assistance of counsel, and in May 2023, defendant *pro se* filed additional claims of ineffective assistance. Neither of defendant's filings raised the claim that counsel improperly induced defendant to waive his right to a jury trial.

¶ 15 In June 2021, the parties convened for a preliminary *Krankel* inquiry (see *People v. Krankel*, 102 Ill. 2d 181 (1984)) into defendant's *pro se* claims of ineffective assistance. The trial court granted defendant a continuance, explaining the purpose of a *Krankel* hearing and emphasizing that if defendant had any additional complaints about his attorney's performance, he needed to raise them.

¶ 16 In July 2021, the trial court conducted a *Krankel* hearing. Defendant raised many claims but, again, he did not allege that his counsel improperly induced his jury waiver. In August 2021, the court entered a written order, finding all of defendant's claims of ineffective assistance "conclusory, misleading, legally immaterial or amounting to trial strategy" and declining to

appoint independent counsel to investigate defendant's claims.

¶ 17 Later in August 2021, the trial court sentenced defendant to consecutive prison sentences of (1) two terms of natural life in prison for the two counts of first degree murder and (2) two terms of 31 years in prison for the attempted murder counts. The remaining four counts of first degree murder were dismissed under the one-act, one-crime doctrine.

¶ 18 In September 2021, defendant appealed, arguing that the trial court (1) based its finding of guilt on its "mistaken belief that defendant had a duty to retreat prior to acting in self-defense" and (2) erred by not appointing independent counsel to investigate defendant's ineffective assistance claims following the preliminary *Krankel* inquiry. In September 2022, this court affirmed. *Brown*, 2022 IL App (4th) 210504-U, ¶ 1.

¶ 19 D. The Postconviction Proceedings

¶ 20 In June 2023, defendant *pro se* filed a petition seeking postconviction relief pursuant to the Act. Relevant to this appeal, the petition alleged that defense counsel rendered ineffective assistance when he "caused [defendant] to waive his right to a jury trial by advising him that a bench trial would be better because the judge owed trial counsel a favor and the judge would have information not available to a jury."

¶ 21 In support of this claim, defendant attached his own affidavit, asserting as follows:

"[Defense counsel] caused me to sign a jury waiver form, waiving my right to a jury trial by advising me that a bench trial would be better because [the trial judge] owed [defense counsel] a favor and would have information not available to a jury[.] I would not have waived my right to a jury trial in the absence of defense counsel \*\*\* promising me that [the trial judge] would have information during [a] bench trial not available to a jury[, and owed [defense counsel] \*\*\* a favor."

¶ 22 In August 2023, the trial court entered a written order summarily dismissing defendant’s petition as “frivolous and patently without merit.” Moreover, the court found that the allegations were “not supported by any fact and were readily available to be raised on direct appeal if such representations were in fact made to [defendant] by counsel.”

¶ 23 This appeal followed.

## ¶ 24 II. ANALYSIS

¶ 25 Defendant appeals, arguing the trial court erred by summarily dismissing his postconviction petition because he stated the gist of a constitutional claim.

¶ 26 Because we agree with defendant, we reverse and remand for further proceedings pursuant to the Act.

### ¶ 27 A. The Applicable Law

#### ¶ 28 1. *Proceedings Under the Act*

¶ 29 The Act provides a criminal defendant the means to redress substantial violations of his constitutional rights that occurred in his original trial or sentencing. *People v. Fathauer*, 2019 IL App (4th) 180241, ¶ 40; 725 ILCS 5/122-1 (West 2022). The Act contains a three-stage procedure for relief. *Fathauer*, 2019 IL App (4th) 180241, ¶ 40 (citing *People v. Allen*, 2015 IL 113135, ¶ 21); 725 ILCS 5/122-2.1 (West 2022)).

¶ 30 At the first stage, the trial court shall, within the first 90 days after the petition is filed and docketed, dismiss a petition summarily if the court determines it is “frivolous or is patently without merit.” 725 ILCS 5/122-2.1(a)(2) (West 2022). A petition may be dismissed as frivolous or patently without merit only if the petition has no arguable basis either in law or in fact. *Fathauer*, 2019 IL App (4th) 180241, ¶ 40 (citing *Allen*, 2015 IL 113135, ¶ 25). “A petition which lacks an arguable basis either in law or in fact is one which is based on an indisputably meritless

legal theory or a fanciful factual allegation. An example of an indisputably meritless legal theory is one which is completely contradicted by the record.” *People v. Hodges*, 234 Ill. 2d 1, 16 (2009).

¶ 31 Because most postconviction petitions are drafted by *pro se* defendants, “the threshold for a petition to survive the first stage of review is low.” (Internal quotation marks omitted.) *Fathauer*, 2019 IL App (4th) 180241, ¶ 40. If a petition alleges sufficient facts to state the gist of a constitutional claim, first-stage dismissal is inappropriate. *Id.* All well-pleaded facts are to be taken as true if they are not positively rebutted by the original trial record. *People v. Sparks*, 393 Ill. App. 3d 878, 883 (2009) (citing *People v. Coleman*, 183 Ill. 2d 366, 381 (1998)).

¶ 32 “A postconviction petition alleging ineffective assistance of counsel may not be dismissed at the first stage of the proceedings 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. Brown*, 236 Ill. 2d 175, 185 (2010).

¶ 33 This court reviews first-stage dismissals under a *de novo* standard of review. *Allen*, 2015 IL 113135, ¶ 25.

¶ 34 *2. Ineffective Assistance of Counsel*

¶ 35 “To demonstrate ineffective assistance of counsel, a defendant must show that (1) the attorney’s performance fell below an objective standard of reasonableness and (2) the attorney’s deficient performance prejudiced the defendant in that, absent counsel’s deficient performance, there is a reasonable probability that the result of the proceeding would have been different.” *People v. Jackson*, 2020 IL 124112, ¶ 90 (citing *Strickland v. Washington*, 466 U.S. 668, 687 (1984)). “A reasonable probability is a probability which undermines confidence in the outcome of the trial.” *People v. Sturgeon*, 2019 IL App (4th) 170035 ¶ 84. “Because the defendant must satisfy both prongs of this test, the failure to establish either is fatal to the claim.” *Jackson*,



2020 IL 124112, ¶ 90 (citing *Strickland*, 466 U.S. at 697).

¶ 36 B. This Case

¶ 37 Here, defendant argues that his petition stated the gist of a constitutional claim because the record does not positively rebut his allegations that trial counsel improperly induced him to waive his right to a jury trial by telling him the judge owed counsel a favor and would have access to information that a jury would not. We agree.

¶ 38 We emphasize that *pro se* petitions at the first stage (1) are to be liberally construed, (2) must present only a limited amount of detail, and (3) need not include legal arguments or citations to legal authority. *People v. Edwards*, 197 Ill. 2d 239, 244 (2001). Moreover, “where defendants are acting *pro se*, courts should review their petitions with a lenient eye, allowing borderline cases to proceed.” (Internal quotation marks omitted). *Hodges*, 234 Ill. 2d at 21.

¶ 39 This court takes defendant’s allegations as true only if they are not positively rebutted by the record. *Sparks*, 393 Ill. App. 3d at 883. Here, nothing in the record affirmatively rebuts defendant’s claim.

¶ 40 During the trial court’s admonitions to defendant when he waived his right to a jury trial, the court did not ask defendant if any threats or promises had been made to him in exchange for his jury waiver. Had the court done so, defendant could have raised defense counsel’s alleged promise. However, at this stage of proceedings, defendant’s postconviction allegations, being not positively rebutted by the record, need to be taken as true.

¶ 41 Taking defendant’s allegations as true, defense counsel’s inducing defendant’s waiver of jury trial by advising defendant that the trial judge owed him a favor and had information that the jury would not know would arguably constitute ineffective assistance. A defense counsel’s performance is unreasonable if he makes improper or erroneous representations to a defendant,

causing that defendant to waive his right to a jury trial involuntarily. *People v. Smith*, 326 Ill. App. 3d 831, 849 (2001) (stating that because trial counsel's alleged representation that a judge would consider inadmissible matters is legally inaccurate, counsel would be failing his professional responsibility of ensuring that defendant's waiver is knowingly and understandingly consented to by his client).

¶ 42 Last, the trial court not only dismissed defendant's claim on its merits, but also because the allegations concerning trial counsel's promise "were readily available to be raised on direct appeal if such representations were in fact made." We disagree. Claims of ineffective assistance of counsel based on matters outside the record cannot be raised on direct appeal and are not forfeited. *Id.* at 839. Because the alleged improper communications between trial counsel and defendant are not part of the record, that claim required additional information to be provided, which was furnished by defendant in the form of his affidavit. Additionally, a defendant does not forfeit issues not raised at a *Krankel* inquiry (*People v. McGee*, 2021 IL App (2d) 190040, ¶ 41).

¶ 43 We note the State's arguments that (1) defendant is defrauding the court by plagiarizing *Smith* as a basis for the allegations in his postconviction petition and (2) defendant forfeited his claim for the purposes of postconviction proceedings because he failed to raise the issue at the *Krankel* hearing. Neither argument is correct. If, as the State argues, defendant's claims are fraudulent, that is a matter to be resolved by further trial court proceedings. If the State's claims are shown to be correct, the court could then take steps to impose appropriate sanctions on defendant.

¶ 44 III. CONCLUSION

¶ 45 For the reasons stated, we reverse the trial court's dismissal and remand for further proceedings pursuant to the Act.

¶ 46

Reversed and remanded.