

**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) 250045-U

NO. 4-25-0045

IN THE APPELLATE COURT

OF ILLINOIS

FOURTH DISTRICT

**FILED**

September 8, 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.	)	Peoria County
BREON LAVAR JONES,	)	No. 19CF488
Defendant-Appellant.	)	
	)	Honorable
	)	Katherine S. Gorman,
	)	Judge Presiding.

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PRESIDING JUSTICE HARRIS delivered the judgment of the court.  
Justices Lannerd and Cavanagh concurred in the judgment.

### **ORDER**

¶ 1 *Held:* The appellate court reversed and remanded, finding defendant made a substantial showing of a claim that his trial counsel provided ineffective assistance by failing to file a notice of appeal after he requested that she do so.

¶ 2 Defendant, Breon Lavar Jones, appeals the dismissal of his postconviction petition at the second stage of postconviction proceedings. Defendant argues that his postconviction petition made a substantial showing of a constitutional violation where he claimed that his trial counsel was ineffective for failing to file a notice of appeal. We reverse and remand.

¶ 3 I. BACKGROUND

¶ 4 Following a jury trial in January 2020, defendant was found guilty of unlawful possession of a weapon by a felon (720 ILCS 5/24-1.1(a) (West 2018)). On May 21, 2020, the trial court sentenced defendant to 20 years' imprisonment. Though the offense was charged as a

Class 2 felony (see *id.* § 24-1.1(e)), defendant was sentenced as a Class X offender pursuant to section 5/4.5-5-95(b) of the Unified Code of Corrections (730 ILCS 5/5-4.5-95(b) (West 2020)).

Defendant did not file a direct appeal.

¶ 5 On September 14, 2020, defendant, *pro se*, filed a “Petition to Vacate Sentence” under section 2-1401(f) of the Code of Civil Procedure (725 ILCS 5/2-1401(f) (West 2020)).

Defendant asserted that he was sentenced as a Class X offender based on a prior conviction for aggravated unlawful use of a weapon (AUUW) (720 ILCS 5/24-1.6(a)(2), (d) (West 2012)), which was based on a facially unconstitutional statute and void *ab initio*. Defendant attached an order showing that his prior AUUW conviction had been vacated on September 4, 2020.

Although the trial court denied the petition to vacate the sentence, it resentenced defendant to nine years’ imprisonment on December 17, 2020.

¶ 6 On August 12, 2022, defendant, *pro se*, filed a motion for leave to file a late notice of appeal in the appellate court. Defendant alleged that he learned that his trial attorney had failed to file a notice of appeal in December 2021, when he inquired about the appeal with the Office of the State Appellate Defender (OSAD). Along with his motion for leave to file a late notice of appeal, he filed an affidavit, which was dated May 31, 2022, in which he averred that his trial counsel told him that a notice appeal had been filed on his behalf and that he had recently become aware that his trial counsel had not filed a notice of appeal, even though he had requested that she do so. The appellate court allowed defendant’s motion for leave to file a late notice of appeal and appointed OSAD to represent him, but it found that defendant’s *pro se* late notice of appeal was deficient and directed OSAD to file a compliant one.

¶ 7 On January 17, 2023, OSAD filed a motion to dismiss the appeal, which alleged that defendant had filed his notice of appeal too late and that it could not be cured to bring it into

compliance with the applicable supreme court rules. On January 18, 2023, the appellate court allowed OSAD's motion to dismiss the appeal.

¶ 8 On March 1, 2023, defendant, *pro se*, filed a postconviction petition claiming, *inter alia*, that his trial counsel provided ineffective assistance by failing to file a notice of appeal. Defendant alleged that he “asked [his trial] attorney to file an [*sic*] notice of appeal and she failed to file the notice of appeal accordingly [*sic*] to [Illinois] Supreme Court Rule 606(b) [(eff. July 1, 2017)].” Defendant also alleged that counsel's failure to file a notice of appeal resulted in the loss of his right to appeal. On August 14, 2023, defendant, *pro se*, subsequently filed an amended postconviction petition raising additional claims. On October 17, 2023, the trial court entered an order docketing the *pro se* postconviction petition for further proceedings and appointing counsel to represent defendant.

¶ 9 On April 24, 2024, defendant, through counsel, filed an amended postconviction petition, alleging that trial counsel provided ineffective assistance by failing to (1) preserve any issues in the untimely posttrial motion she filed, (2) file any postsentencing motion, and (3) file a notice of appeal. The amended petition alleged that because counsel failed to file a timely notice of appeal, defendant was “entirely deprived of his constitutional right to a direct appeal.” The amended petition stated that it “adopt[ed] the factual assertions in [defendant's] initial and amended *pro se* filings,” including his allegation that he asked his trial counsel to appeal his conviction, but counsel failed to do so. The petition also noted that defendant attempted to correct counsel's error by filing a late notice of appeal when he learned that counsel failed to file a notice of appeal.

¶ 10 On September 25, 2024, the State filed a motion to dismiss the amended postconviction petition, arguing that defendant failed to make a substantial showing of a claim of

ineffective assistance of counsel based on counsel’s failure to file a posttrial motion or notice of appeal because the amended petition failed to “describe any specific allegation” that trial counsel should have made.

¶ 11 On December 10, 2024, the trial court entered an order granting the State’s motion to dismiss. The court found that defendant’s postconviction arguments either “failed to address sufficiently constitutional issues” (emphasis omitted) or were completely rebutted by the record. This appeal followed.

¶ 12 II. ANALYSIS

¶ 13 On appeal, defendant argues that the trial court erred by dismissing his amended postconviction petition because, taken as true and liberally construed, the petition made a substantial showing of a claim that his trial counsel was ineffective for failing to file a notice of appeal. Defendant contends that the matter should be remanded for an evidentiary hearing.

¶ 14 The State argues that the matter should not be remanded for a third-stage evidentiary hearing but instead should be remanded for further second-stage proceedings “to allow compliance by postconviction counsel pursuant to [Illinois Supreme Court] Rule 651(c) [(eff. July 1, 2017)].” The State asserts: “Although defendant’s petition, and attached affidavit, when taken as true, would make a substantial showing of a constitutional violation, defendant fails to include the timeliness of his request to file a notice of appeal.” The State contends that postconviction counsel amended the *pro se* postconviction petition “insufficiently” by failing to allege when defendant requested that his trial counsel file a notice of appeal.

¶ 15 The Post-Conviction Hearing Act (Act) (725 ILCS 5/122-1 *et seq.* (West 2024)) sets forth a three-stage process by which individuals convicted of criminal offenses may challenge their convictions on grounds of constitutional violations. *People v. Domagala*, 2013 IL

113688, ¶ 32. At the first stage of postconviction proceedings, the trial court independently reviews the postconviction petition and may dismiss it if it finds it to be frivolous or patently without merit. *Id.* If the court does not summarily dismiss the petition at the first stage, it advances to the second stage, where counsel may be appointed to represent an indigent defendant and the State may file a motion to dismiss or an answer to the petition. *Id.* ¶ 33. At the second stage, the court must determine whether the petition and any accompanying documentation make a substantial showing of a constitutional violation. *Id.* If the court finds the petition has made the requisite substantial showing, it advances the matter to a third-stage evidentiary hearing. *Id.* ¶ 34.

¶ 16           “The question raised in an appeal from an order dismissing a postconviction petition at the second stage is whether the allegations in the petition, liberally construed in favor of the petitioner and taken as true, are sufficient to invoke relief under the Act.” *People v. Sanders*, 2016 IL 118123, ¶ 31. “[T]he ‘substantial showing’ of a constitutional violation that must be made at the second stage [citation] is a measure of the legal sufficiency of the petition’s well-pled allegations of a constitutional violation, *which if proven* at an evidentiary hearing, would entitle petitioner to relief.” (Emphasis in original.) *Domagala*, 2013 IL 113688, ¶ 35. Where, as here, a postconviction is dismissed at the second stage of proceedings, our review is *de novo*. *Sanders*, 2016 IL 118123, ¶ 31.

¶ 17           “Both the United States and Illinois Constitutions guarantee a criminal defendant the right to effective assistance of counsel.” *People v. Peterson*, 2017 IL 120331, ¶ 79; see U.S. Const., amends. VI, XIV; Ill. Const. 1970, art. I, § 8. In order to establish a claim of ineffective assistance of counsel, a defendant must “prove that defense counsel’s performance fell below an objective standard of reasonableness and that this substandard performance caused prejudice.” *People v. Ross*, 229 Ill. 2d 255, 260 (2008). Additionally, “under the Illinois Constitution the

right to appeal a criminal conviction is fundamental.” *Id.* at 268; see Ill. Const. 1970, art. VI, § 6. In a criminal case, the decision to appeal belongs to the defendant rather than defense counsel. *People v. Medina*, 221 Ill. 2d 394, 403 (2006).

¶ 18 Our supreme court has held that, in the context of establishing a claim of ineffective assistance of counsel based on defense counsel’s failure to file a notice of appeal, “it is professionally unreasonable to disregard specific instructions from the defendant to file a notice of appeal.” *Ross*, 229 Ill. 2d at 261. Moreover, “prejudice may be presumed when defense counsel’s ineffectiveness rendered appellate proceedings nonexistent, essentially denying the defendant’s right to appeal.” *Id.* at 262.

¶ 19 Here, defendant alleged in his *pro se* postconviction petition that he asked his trial attorney to file a notice of appeal, but she failed to do so, resulting in the loss of his right to appeal his conviction. Taken as true and liberally construed, these allegations establish that counsel performed deficiently by disregarding defendant’s instructions to file a notice of appeal, and this rendered appellate proceedings nonexistent such that prejudice may be presumed. See *id.* at 261-62. Thus, we find defendant’s amended postconviction petition made a substantial showing of a constitutional claim that defendant’s trial counsel provided ineffective assistance by failing to file a notice of appeal, and, accordingly, the matter must be remanded for a third-stage evidentiary hearing on this claim.

¶ 20 In reaching our holding, we reject the State’s argument that we should instead remand the matter for further second-stage proceedings on the basis that defendant’s *postconviction* counsel provided an unreasonable level of assistance by failing to allege that defendant timely requested his counsel file a notice of appeal. Significantly, defendant does not challenge his postconviction counsel’s performance or request that the matter be remanded for

further second-stage proceedings.

¶ 21 Moreover, we find that, liberally construed, the factual allegations in defendant's *pro se* postconviction petition (which were adopted by postconviction counsel in the amended postconviction petition) implied that defendant made a timely request that his trial counsel file a notice of appeal on his behalf. Specifically, defendant alleged that he asked counsel to file a notice of appeal, and she failed to do so "accordingly [*sic*] to Supreme Court Rule 606(b)." Notably, Rule 606(b) concerns the time limitations for filing a notice of appeal. See Ill. S. Ct. R. 606(b) (eff. July 1, 2017). Thus, liberally construed, this allegation reasonably implies that defendant requested that counsel file a notice of appeal at a time when she would have been able to do so in compliance with the time limitations in Rule 606(b). If the State wishes to explore the question of exactly when defendant requested that his counsel file a notice of appeal, it may do so at the evidentiary hearing.

¶ 22 III. CONCLUSION

¶ 23 For the reasons stated, we reverse the trial court's judgment dismissing defendant's postconviction petition at the second stage of postconviction proceedings, and we remand the matter for an evidentiary hearing on defendant's claim that his trial counsel provided ineffective assistance for failing to file a notice of appeal after he requested that she do so.

¶ 24 Reversed and remanded.