

NOTICE

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2019 IL App (4th) 180304-U

NO. 4-18-0304

IN THE APPELLATE COURT

OF ILLINOIS

FOURTH DISTRICT

FILED

June 17, 2019

Carla Bender

4th District Appellate Court, IL

THE PEOPLE OF THE STATE OF ILLINOIS,)	Appeal from the
Plaintiff-Appellee,)	Circuit Court of
v.)	McLean County
MICHAEL WILLIAMS,)	No. 10CF1221
Defendant-Appellant.)	
)	Honorable
)	Scott D. Drazewski,
)	Judge Presiding.

JUSTICE STEIGMANN delivered the judgment of the court.
Justices Knecht and Turner concurred in the judgment.

ORDER

¶ 1 *Held:* The appellate court affirmed the trial court’s denial of defendant’s posttrial motion.

¶ 2 The question presented in this case is whether defendant, Michael Williams, received ineffective assistance of posttrial counsel. We conclude that defendant has not shown posttrial counsel was ineffective and affirm the trial court’s judgment.

¶ 3 I. BACKGROUND

¶ 4 A. The First Trial and Appeal

¶ 5 In June 2011, a jury convicted defendant, Michael Williams, of one count of child abduction. 720 ILCS 5/10-5(b)(10) (West 2010). In August 2011, the trial court sentenced defendant to an extended term of five years in prison. On direct appeal, defendant argued the trial court erred by giving its own instruction to the jury after deliberations began. *People v. Williams*,

2013 IL App (4th) 110936, ¶ 2, 988 N.E.2d 225. This court reversed defendant’s conviction and remanded for new trial in accordance with our directions. *Id.* ¶ 36.

¶ 6 B. The Second Trial and Appeal

¶ 7 In December 2014, at the second trial, defendant was again found guilty of child abduction. In his allocution at the sentencing hearing, defendant stated that he wanted a new trial so he could hire a new attorney. The trial court sentenced defendant to 30 months’ probation. Defendant again appealed and argued that (1) his sentence of probation should be vacated because he had already served a sentence of five years and (2) the trial court erred in failing to conduct a hearing in compliance with *People v. Krankel*, 102 Ill. 2d 181, 464 N.E.2d 1045 (1984), on his posttrial claims of ineffective assistance of counsel. *People v. Williams*, No. 4-15-0641 (2017) (unpublished summary order under Illinois Supreme Court Rule 23(c)). On the second appeal, this court concluded that defendant was improperly given an increased sentence and the trial court needed to conduct a *Krankel* hearing on his claims of ineffective assistance of counsel. *Id.*

¶ 8 C. The Proceedings on Remand

¶ 9 In December 2017, the trial court conducted a hearing pursuant to this court’s remand. The court first changed defendant’s sentence to five years in prison with credit for time served. The court then addressed whether a *Krankel* hearing was required. The court noted it did not need to conduct a *Krankel* hearing or appoint new counsel because defendant had retained private counsel on remand. The court continued the matter to allow new counsel to review the record and file a posttrial motion on defendant’s ineffective assistance claims.

¶ 10 In February 2018, defendant filed a motion for a new trial, in which he argued, among other things, that trial counsel was ineffective for failing “to exclude a juror who was scowling at the Defendant after Defendant requested his attorney to do so.” Defendant did not

attach an affidavit to the motion or make any further arguments concerning the allegedly biased juror in his motion.

¶ 11 In April 2018, the trial court conducted a hearing on defendant’s motion. In his oral argument, defense counsel did not address the claim that trial counsel was ineffective for failing to strike a biased juror. The trial court denied defendant’s motion for a new trial. Regarding defendant’s biased juror claim, the court stated as follows:

“But as to some of the specifics then, because I do have some notes that I want to spread on the record as well, is I note that counsel has not argued—and I’m talking about [defense counsel]—one of the issues in particular because it is outside the record. The Court can’t—[the assistant state’s attorney] cannot determine what the record, the transcript of the proceedings—what the defendant would have requested his attorney to do so or the basis upon which he would have requested him to do so as far as excusing a particular juror.

The allegation is that counsel failed to exclude a juror who was scowling at the defendant after defendant requested his attorney to do so. Again, that is a matter outside of the record. There’s nothing to confirm or dispel or deny that. So from this aspect of the proceeding, it would not be available for the Court to review. It could or it might be a basis under a different theory or proceeding, such as a post-conviction petition, but there’s nothing that the Court can ascertain from that allegation which is not contained within the record itself.”

¶ 12 This appeal followed.

¶ 13 II. ANALYSIS

¶ 14 Defendant appeals, arguing that his posttrial counsel was ineffective for failing to

adequately argue that trial counsel was ineffective for failing to strike a biased juror. First, defendant asserts that posttrial counsel wholly abandoned a potentially viable claim by not providing more factual support for his claim that a juror was biased against him. Second, defendant contends posttrial counsel was ineffective for failing to correct the trial court that defendant could not file a postconviction petition because he had already served his sentence and period of mandatory supervised release (MSR). According to defendant, posttrial counsel's failures deprived him of his only opportunity to argue a potentially meritorious claim that trial counsel provided ineffective assistance. We disagree and affirm.

¶ 15 A. The Standard of Review and Applicable Law

¶ 16 Criminal defendants are guaranteed the right to counsel at every stage of a criminal proceeding where substantial rights of a criminal accused may be affected. U.S. Const., amend. VI; *People v. Hughes*, 2012 IL 112817, ¶ 44, 983 N.E.2d 439. A defendant is entitled to effective assistance of counsel at the posttrial stage of proceedings, and posttrial counsel may be ineffective if he fails to raise a meritorious claim of trial counsel's ineffectiveness. See *People v. Moore*, 307 Ill. App. 3d 107, 114, 716 N.E.2d 851, 856 (1999).

¶ 17 To establish a claim of ineffective assistance of counsel, the defendant must show that counsel's performance was (1) deficient and (2) prejudicial. *People v. Westfall*, 2018 IL App (4th) 150997, ¶ 61, 115 N.E.3d 1148. To establish deficient performance, a defendant must demonstrate that his attorney's performance fell below an objective standard of reasonableness. *Id.* ¶ 62. This court is highly deferential of counsel's performance. *People v. McGath*, 2017 IL App (4th) 150608, ¶ 38, 83 N.E.3d 671. We use this deferential standard because "[t]here are countless ways to provide effective assistance in any given case. Even the best criminal defense attorneys would not defend a particular client in the same way." *Strickland v. Washington*, 466

U.S. 668, 689 (1984).

¶ 18 The defendant must overcome the strong presumption that the challenged action or inaction may have been the product of sound trial strategy. *People v. Manning*, 241 Ill. 2d 319, 327, 948 N.E.2d 542, 547 (2011). “Matters of trial strategy generally will not support a claim of ineffective assistance of counsel unless counsel failed to conduct any meaningful adversarial testing.” *People v. Sharp*, 2015 IL App (1st) 130438, ¶ 102, 26 N.E.3d 460. Counsel’s actions during jury selection are generally considered matters of trial strategy and are virtually unchallengeable on appeal. *Manning*, 241 Ill. 2d at 333.

¶ 19 To establish prejudice, a defendant must show that but for counsel’s errors, there is a reasonable probability that the result of the proceeding would have been different. *Westfall*, 2018 IL App (4th) 150997, ¶ 63. A reasonable probability is a probability which undermines confidence in the outcome of the trial. *Id.* Put another way, the question is whether counsel’s deficient performance rendered the result of the trial unreliable or fundamentally unfair. *People v. Evans*, 209 Ill. 2d 194, 220, 808 N.E.2d 939, 953-54 (2004).

¶ 20 A defendant’s failure to satisfy either prong negates a claim of ineffective assistance of counsel. *People v. Fellers*, 2016 IL App (4th) 140486, ¶ 23, 77 N.E.3d 994. “Whether counsel provided ineffective assistance is a mixed question of fact and law.” *People v. Davis*, 353 Ill. App. 3d 790, 794, 819 N.E.2d 1195, 1199-1200 (2004). A reviewing court defers to the trial court’s factual findings but reviews *de novo* the ultimate issue of whether counsel rendered ineffective assistance. *People v. Westmoreland*, 2013 IL App (2d) 120082, ¶ 27, 997 N.E.2d 278.

¶ 21 B. This Case

¶ 22 Defendant argues that posttrial counsel wholly failed to present any factual basis to support the claim that trial counsel was ineffective for failing to strike a potentially biased ju-

ror and therefore prejudice should be presumed. We conclude that defendant has failed to demonstrate prejudice or that posttrial counsel's actions were objectively unreasonable.

¶ 23 The sole argument in the record addressing defendant's claim is a single sentence: "Defendant's counsel failed to seek to exclude a juror who was scowling at the Defendant after Defendant requested his attorney to do so." First, matters of jury selection fall under the purview of trial strategy. *Manning*, 241 Ill. 2d at 333. Accordingly, the decision to seat a particular juror ultimately rests with trial counsel. See *People v. West*, 187 Ill. 2d 418, 432, 719 N.E.2d 664, 673 (1999). "The only exception to this rule is when counsel's chosen trial strategy is so unsound that counsel entirely fails to conduct any meaningful adversarial testing." (Internal quotation marks omitted.) *Id.* at 432-33. The record demonstrates that trial counsel (1) questioned potential jurors during *voir dire*, (2) successfully moved to strike two jurors for cause on the grounds that they could not be fair and impartial, and (3) used all seven of his preemptory challenges. Accordingly, defendant cannot show that he was prejudiced by trial counsel or posttrial counsel.

¶ 24 Second, numerous Illinois Supreme Court cases have declined to find ineffective assistance when attorneys failed to strike a juror who made statements that he or she could not be fair and unbiased. See *Manning*, 241 Ill. 2d at 334-35 (counsel did not provide ineffective assistance by failing to strike juror who stated he "believed sex offenders should be locked up for life"); see also *People v. Metcalfe*, 202 Ill. 2d 544, 549, 562-63, 782 N.E.2d 263, 267, 275 (2002) (counsel did not provide ineffective assistance by failing to strike juror who indicated she could not be fair and impartial because she was the victim of a crime and her alleged perpetrator " 'got off because of a technicality' "). Given courts' reluctance to find ineffective assistance even when jurors *actually verbalized their potential bias*, posttrial counsel did not act unreasonably by failing to advance an argument that a juror was biased merely because he or she "scowled" at

defendant.

¶ 25 C. The Trial Court’s Reasoning

¶ 26 Finally, defendant claims that posttrial counsel was ineffective for failing to correct the trial court when it mused that defendant could further his claim in a postconviction petition. The appellate court reviews judgments, not reasons therefor, and “may affirm a lower court’s judgment on any ground of record ***.” *People v. Johnson*, 208 Ill. 2d 118, 129, 803 N.E.2d 442, 449 (2003). “ ‘The fact that the sentencing judge added some personal observations before imposing sentence, while not to be encouraged, is of no consequence.’ ” *People v. Lovelace*, 2018 IL App (4th) 170401, ¶ 34, 104 N.E.3d 532 (quoting *People v. Steppan*, 105 Ill. 2d 310, 323, 473 N.E.2d 1300, 1307 (1985)). We conclude that the trial court’s statement regarding the possibility of bringing a postconviction petition was merely an offhand comment and was not a basis for its ruling.

¶ 27 Even assuming the trial court’s reasoning was incorrect, the court properly denied defendant’s motion for a new trial. As we explained earlier, defendant has not demonstrated posttrial counsel acted objectively unreasonably or that he was prejudiced by trial counsel or posttrial counsel. Given trial counsel’s performance during *voir dire*, no reason exists to doubt the reliability or fairness of defendant’s trial, and posttrial counsel’s failure to argue the claim further did not prejudice defendant.

¶ 28 III. CONCLUSION

¶ 29 For the reasons stated, we affirm the trial court’s judgment. As part of our judgment, we award the State its \$50 statutory assessment against defendant as costs of this appeal. 55 ILCS 5/4-2002 (West 2016).

¶ 30 Affirmed.