

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).

2019 IL App (4th) 170517-U

NO. 4-17-0517

**FILED**  
July 24, 2019  
Carla Bender  
4<sup>th</sup> District Appellate  
Court, IL

IN THE APPELLATE COURT  
OF ILLINOIS  
FOURTH DISTRICT

THE PEOPLE OF THE STATE OF ILLINOIS,	)	Appeal from the
Plaintiff-Appellee,	)	Circuit Court of
v.	)	Champaign County
GREGORY G. HAYES,	)	No. 13CF567
Defendant-Appellant.	)	
	)	Honorable
	)	Brett N. Olmstead,
	)	Judge Presiding.

---

JUSTICE TURNER delivered the judgment of the court.  
Justices Knecht and Harris concurred in the judgment.

**ORDER**

¶ 1 *Held:* The trial court did not err in granting the State’s motion to dismiss defendant’s postconviction petition.

¶ 2 On July 12, 2017, the trial court granted the State’s motion to dismiss defendant Gregory G. Hayes’s postconviction petition during the second stage of proceedings under the Post-Conviction Hearing Act (725 ILCS 5/122-1 to 122-7 (West 2016)). Defendant appeals, arguing the court erred in granting the State’s motion to dismiss because defendant made a substantial showing his trial counsel was ineffective for eliciting evidence from defendant regarding a prior conviction even though the trial court had ruled the State could not introduce this evidence against defendant. We affirm.

¶ 3 I. BACKGROUND

¶ 4 This court affirmed defendant’s conviction for aggravated criminal sexual assault

(720 ILCS 5/11-1.30(a)(2) (West 2012)) on direct appeal in October 2015. *People v. Hayes*, 2015 IL App (4th) 140162-U. Pursuant to this court’s practice at that time, we declined to address whether defense counsel was ineffective, holding this type of claim was better raised during postconviction proceedings because the record before the appellate court on a direct appeal is often insufficient to establish whether counsel was ineffective. *Hayes*, 2015 IL App (4th) 140162-U, ¶ 25. However, we did provide a thorough summary of the evidence presented at trial (*Hayes*, 2015 IL App (4th) 140162-U, ¶¶ 5-19), which we choose not to repeat here.

¶ 5 In December 2016, defendant filed a *pro se* postconviction petition, arguing in part his trial counsel provided ineffective assistance of counsel. In March 2017, the trial court appointed counsel to represent defendant. Appointed counsel was given leave to file an amended postconviction petition. On April 28, 2017, counsel filed what was titled an amended postconviction petition. However, counsel later clarified this was intended to be a supplement to defendant’s *pro se* postconviction petition. On May 31, 2017, the State filed a motion to dismiss, arguing, in part, defendant’s ineffective assistance of counsel claim could be disposed of because defendant could not establish prejudice due to the overwhelming evidence of defendant’s guilt.

¶ 6 On July 12, 2017, the trial court held a hearing on the status of defendant’s postconviction petition and the State’s motion to dismiss. Because defendant only challenges the trial court’s decision to dismiss his postconviction petition based on his allegation his trial counsel was ineffective for asking about his prior conviction, we need not address the other claims included in the petition. As to the claim of ineffective assistance of counsel at issue here, the court noted the State assumed defense counsel’s performance was deficient. The court said the State’s assumption was “probably dead on correct” because it could not imagine a valid strategic reason for defense counsel’s question. However, after trial counsel made the mistake of

asking the question, she handled the situation the best she could by moving on and never mentioning the conviction again. According to the court, any effort to rehabilitate defendant would have compounded the initial error.

¶ 7 With regard to defendant establishing he suffered any prejudice from his trial counsel's performance, the trial court ruled defendant could not establish he was prejudiced because of the strength of the State's case. The court noted the video evidence and other witnesses corroborated parts of G.C.'s testimony defendant assaulted her. Further, the State's case was very strong, and defendant's version of events was not believable. According to the court, defense counsel's mistake in asking about defendant's conviction was overshadowed by the evidence against defendant. The court stated no reasonable probability existed the jury would have believed defendant's version of events regardless of trial counsel asking him about his prior conviction. The court stated:

“It's just—it's so improbable that the jury was going to assign it no credibility at all, and after you testified, the State's case was better than it was before. That testimony and any of the other issues in this case, none of that would've made a difference here. None of that created a reasonable probability that the result would have been different at the trial level or that it would have been different at the appellate level either.”

¶ 8 The trial court granted the State's motion to dismiss. This appeal followed.

¶ 9 II. ANALYSIS

¶ 10 Defendant argues the trial court erred in granting the State's motion to dismiss his postconviction petition because he made a substantial showing his trial counsel was ineffective for asking defendant about his prior conviction. According to defendant, counsel's error

prejudiced him because the outcome of the case depended on the jury's determination of defendant's credibility.

¶ 11 A trial court may dismiss a postconviction petition if the petition's allegations of fact fail to make a substantial showing of a constitutional violation. *People v. Coleman*, 183 Ill. 2d 366, 382, 701 N.E.2d 1063, 1072 (1998). We review a trial court's decision to dismiss a postconviction petition *de novo*. *Coleman*, 183 Ill. 2d at 388-89, 701 N.E.2d at 1075. Defendant argues the allegations in his petition made a substantial showing his trial counsel was ineffective.

¶ 12 A postconviction petitioner must make a substantial showing his attorney's performance was objectively unreasonable and petitioner was prejudiced to merit postconviction relief on a claim of ineffective assistance of counsel. *People v. Martinez*, 389 Ill. App. 3d 413, 415, 905 N.E.2d 914, 917 (2009). To establish prejudice, a defendant is required to show a reasonable probability the result of the proceeding would have been different absent counsel's error. *Strickland v. Washington*, 466 U.S. 668, 694 (1984). A "reasonable probability" is a probability that undermines confidence in the verdict. *Strickland*, 466 U.S. at 694.

¶ 13 According to defendant, the record shows this case ultimately came down to the jury determining whether defendant or G.C.'s version of events was more credible. However, unlike in *People v. Naylor*, 229 Ill. 2d 584, 893 N.E.2d 653 (2008), upon which defendant relies, the jury in this case was not faced with two different credible versions of events. In *Naylor*, the supreme court stated:

“The trial in the present case was indeed a contest of credibility. On one side, the two officers testified that defendant sold them heroin. On the other side, defendant testified that he had left his apartment to pick up his son from school when he was mistakenly swept up in a drug raid. Defendant's testimony is

credible in that it is consistent with much of the officers' testimony and the circumstances of his arrest. Both defendant and the officers were relating their respective versions of the same underlying incident—a drug raid in a residential housing complex. Given these opposing versions of events, and the fact that no extrinsic evidence was presented to corroborate or contradict either version, the trial court's finding of guilty necessarily involved the court's assessment of the credibility of the two officers against that of defendant.” *Naylor*, 229 Ill. 2d at 606-07, 893 N.E.2d at 667-68.

As the State notes, defendant ignores the overwhelming amount of additional evidence in this case bolstering G.C.’s credibility and diminishing the credibility of his own testimony.

¶ 14 Significant portions of G.C.’s testimony was corroborated by video evidence from inside her dormitory and two other witnesses, Craig Cochrane and Ryan Mok, who responded to G.C.’s distress. G.C. identified defendant as her attacker that night. Cochrane identified defendant in court as the person he saw with G.C. When Cochrane responded to G.C.’s screams, he asked G.C. and defendant whether everything was alright. Defendant started walking away and then ran. Cochrane testified G.C. seemed to be in shock.

¶ 15 University of Illinois police officer Eric Helms, who responded to the dorm, testified G.C. was “distraught” and “visibly upset.” Defendant was identified as the assailant by the police based on the video evidence. Police officers went to defendant’s home, arriving at 4:37 a.m. Officer Wright testified defendant was handcuffed and taken back to the dorm to see if G.C. could identify him, which she did. On the drive to the dorm, defendant told Officer Wright he had spent the day at his in-laws’ house, had slept at his house, and then got up for work to deliver newspapers.

¶ 16           Officer Wright stated he then took defendant to a satellite jail facility. Defendant told Officer Wright he had been at his in-laws' house with his wife and daughter that night. They returned home around 9:30 or 10 p.m. He went to sleep around 11:30 p.m. and woke up at 2:30 a.m. to pick up newspapers for delivery. He returned home by 3:15 a.m., and he and his wife folded the newspapers for delivery. He remained at the house until 4:10 a.m. and then left to deliver some of the newspapers.

¶ 17           Officer Wright testified he told defendant he had evidence contradicting defendant's story, including a video from the dormitory. Wright explained to defendant what the video showed. Defendant did not say anything; he just immediately looked down. When Officer Wright asked defendant if he had been on campus at the dormitory at 3:20 a.m., defendant did not have a response.

¶ 18           Defendant testified as to his version of what occurred on the night in question. He got up at 2 a.m. and drove to 15 Main Street to pick up newspapers for delivery. After picking up the newspaper bundles, while driving down Green Street, he noticed G.C. walking down Busey Street around 3 a.m. He did not know who G.C. was. He found it odd for a young woman to be walking by herself and was concerned for her safety. However, instead of calling the police, he drove around the block to where he thought she would be, parked his car, and started following her. According to defendant, he was worried about being seen as a "creep" so he kept a little distance while following G.C. As an African-American man, he testified he was aware of the stereotypes regarding black men and wanted to present himself as someone who was helping or at least trying to help. He followed G.C. all the way to Allen Hall to ensure she was safe. He testified he got closer to her when she got to Allen Hall.

¶ 19           After G.C. swiped her key card to get inside, defendant told her to have a good

day and turned to walk off but heard G.C. say, “I didn’t need any beefy n\*\*\* following me home.” According to defendant, he then turned around and approached her and followed her inside and asked her what she said. She seemed shocked at first and said she was sorry. He testified he told her he wanted to go outside the dorm and talk about what she said. When asked at trial why he wanted to talk to G.C. outside, he said he was pissed and upset because of what she called him.

¶ 20 Defendant admitted he overreacted by grabbing G.C. and forcing her outside. Once they were outside the dorm, defendant testified G.C. tripped on a rock and fell. He tried to catch her, but he fell over as well, falling “flat on top of her.” He tried to get off of her, and G.C. screamed. At that point, he said he started to understand the gravity of the situation. He told G.C. to calm down and that he was not trying to hurt her. He realized G.C. was laying on his arm so he rolled off of her. He denied putting his hand anywhere near G.C.’s panties or vagina or having any contact with G.C.’s vagina. After he rolled off G.C. and was getting up off the ground, Craig Cochrane showed up on the scene. Defendant said he made eye contact with Cochrane and through “nonverbal communication” determined G.C. was now “with somebody that’s going to actually take care” of her. At that point, defendant testified he left because he knew he could not do anything to help the situation.

¶ 21 Defendant also testified he was confused by Officer Wright’s question at the police station to which he responded he was home at the time of G.C.’s assault. According to defendant, he thought Wright was asking him what he did on a normal basis and not what he did that particular night.

¶ 22 Defendant’s testimony regarding what happened between he and G.C. was not credible. His testimony was contradicted by the testimony of other witnesses in the case, the

video evidence, and his statement to the police the night of the incident.

¶ 23 According to defendant, he was concerned he might have scared G.C. if he approached her because he is a large African-American man. However, defendant's concern about G.C. being scared suddenly disappeared when he followed her into her dormitory without permission and then grabbed her around the neck and dragged her out of the dormitory against her will. At that point, G.C. was clearly scared and struggling against his efforts to forcibly remove her from the building.

¶ 24 Defendant claimed his feelings toward G.C. changed when she got to her dorm and called him a "beefy n\*\*\*." According to defendant, he followed G.C. into her dorm because she used this racist language against him, grabbed her around the neck, and used physical force to drag her outside in the middle of the night from a well-lit hallway in Allen Hall because he wanted to address her inappropriate language. G.C. denied calling defendant a "n\*\*\*." However, assuming, *arguendo*, she did, defendant offered no plausible explanation why he could not have addressed the issue inside the dormitory or, better yet, simply ignored the statement.

¶ 25 Further, from the Allen Hall surveillance video, defendant does not appear to be angry when he follows G.C. into the dormitory or when he is first seen talking to G.C. on the video. Instead, before the violent struggle ensued, he appeared to be calm and trying to persuade G.C. to voluntarily leave the dorm. When it became clear G.C. was not going to leave with him, he grabbed G.C. around the neck from behind and began violently pushing and then pulling her outside. She struggled to stay in the dorm but was unsuccessful. The video clearly shows defendant had no concerns for G.C.'s well-being as he physically removed her from the building against her will.

¶ 26 However, defendant then asked the jury to believe he ended up on top of G.C. not

because he was going to sexually assault her but by accident. According to defendant's testimony, G.C. tripped, he unsuccessfully tried to catch her, and just happened to fall directly on top of her.

¶ 27 Finally, defendant's explanation why shortly after the incident he lied to the police about his whereabouts that night also lacks credibility. According to defendant, even though he knew he had been in a violent incident at Allen Hall and was taken back to the scene of the incident by the police shortly before talking to Officer Wright at the satellite police station, he claimed he did not realize Officer Wright was asking him where he had been during the assault on the victim. Instead, he explained he thought Officer Wright was just asking what his normal schedule was. This explanation is unbelievable.

¶ 28 In short, unlike G.C.'s testimony, defendant's testimony lacked any real credibility long before his trial counsel asked if he had a prior criminal conviction. As a result, the trial court did not err in dismissing defendant's postconviction petition because the record clearly established no reasonable probability existed the jury would have reached a different result had his trial attorney not elicited the fact defendant had a prior conviction.

¶ 29 III. CONCLUSION

¶ 30 For the reasons stated, we affirm the trial court's ruling dismissing defendant's postconviction petition. As part of our judgment, we award the State its \$50 statutory assessment against defendant as costs of this appeal.

¶ 31 Affirmed.