APPENDIX

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APPENDIX A

IN THE
UNITED STATES COURT OF APPEALS
FOR THE SEVENTH CIRCUIT

No. 21-3162

ARTHUR GRADY,

Petitioner-Appellant,

v.

CHARLES TRUITT,

Respondent-Appellee.

Appeal from the United States District Court for the Northern District of Illinois, Eastern Division.
No. 20-cv-02530 — **Mary M. Rowland**, *Judge*.

ARGUED JULY 12, 2023 — DECIDED JULY 20, 2023

Before SYKES, *Chief Judge*, and ROVNER and WOOD, *Circuit Judges*.

WOOD, *Circuit Judge*. A state-court jury convicted Arthur Grady of first-degree murder after a fatal shooting.

At the same time, in response to a special-verdict form, the jury found that the State had not proved that Grady was the triggerman. Contending that the special-verdict finding negated the State's sole theory of guilt, Grady seeks a writ of habeas corpus under 28 U.S.C. § 2254(a). He does so through the lens of ineffective assistance of counsel, because his direct-appeal lawyer raised only two issues on appeal, both of which Grady regards as significantly weaker than the inconsistent-verdict argument. But a careful look at the record satisfies us that the state appellate court's rejection of this contention was not an unreasonable application of *Strickland v. Washington*, 466 U.S. 668 (1984). We therefore affirm the district court's denial of Grady's petition.

I

We rely on the state court's account of the facts, as we see nothing to disturb the usual presumption of correctness. See 28 U.S.C. § 2254(e)(1). In 2009, Grady and his roommate Aaron Bronson ran into the victim at a casino in Indiana. Later in the evening, they went to the victim's Chicago home, where he was shot and killed just outside. *People v. Grady*, 2019 IL App (1st) 163012-U ¶ 3. Bronson cooperated with the state and gave one account of how the victim died; Grady's story was significantly different.

Grady testified that on the night of the shooting, he briefly stopped at the victim's roulette table to investigate a commotion; he and Bronson then decided to leave the casino. He got into Bronson's truck and quickly fell asleep as Bronson drove. When the truck suddenly stopped, he was jostled awake. He then saw Bronson get out of the truck and approach someone on the sidewalk. Grady heard two gunshots, moved to the driver's seat, and drove the truck in reverse down the street. He parked the truck two

blocks away. Realizing he did not have his cell phone, he decided to walk to a gas station to make a call; when he got there, the police detained him briefly. He later went home to sleep and was arrested the next afternoon.

Bronson's account differed in a few crucial respects, though it was largely consistent with Grady's. Bronson swore that he did not shoot the victim. He recalled that Grady approached him at the casino and suggested that they rob the victim and his friends, who Grady believed had won $30,000 at roulette. Bronson agreed, and they followed the victim from the casino to his Chicago home in Bronson's truck. When the victim got out of his car, Grady left the truck and approached the victim, who knocked Grady to the ground after a brief struggle. Bronson said that he was the one who then reversed the truck, heard gunshots, and left. At that point Bronson returned to the apartment that he and Grady sometimes shared. Around 6:00 a.m. Grady returned, told Bronson that he had lost his phone and gun (which he worried might have his fingerprints) and went out again to find them.

By the time the police were able to respond to the shooting, the victim was dead. Searching the scene, they found Grady's cell phone, which they used, along with surveillance video from the casino, to track him down and arrest him. They also searched Grady's apartment, where they discovered a gun. An expert witness later testified that it was the weapon that was used in the shooting.

At trial, the State pursued two theories of Grady's criminal liability. It devoted almost all its attention to the theory that Grady personally shot the victim during a botched robbery attempt, with Bronson aiding him as the driver. But the trial judge also instructed the jury that Grady could be convicted of first-degree murder if he or "one for whose conduct he is legally responsible" killed the

victim. The judge explained to the jury that Grady was legally responsible for the conduct of a person whom Grady aided or assisted in the planning or commission of an offense like armed robbery. During closing argument the State followed up: "Even if you don't believe [Grady was] the shooter … he is guilty of first degree murder. Guilty because he played a role." The jury convicted Grady of first-degree murder. But in answering a special verdict that was needed for a proposed sentencing enhancement, it found that the State did not prove that Grady had personally dis- charged the firearm that killed the victim. 730 ILCS 5/5-8- 1(a)(1)(d)(iii). The court sentenced Grady to 60 years' imprisonment. Bronson, in contrast, received a sentence of only 24 years, presumably thanks to his cooperation.

On direct appeal, Grady unsuccessfully argued (through counsel) that the trial court wrongly sentenced him to 60 years in light of his minimal criminal history, potential for rehabilitation, and Bronson's 24-year sentence. Acting *pro se*, he then tried a state postconviction petition that, as relevant here, alleged ineffective assistance of appellate counsel for failure to argue that the evidence was insufficient to convict him of the murder. Grady argued that the State's theory was premised on Bronson's testimony that Grady was the shooter, yet the special verdict declining to find that Grady pulled the trigger necessarily meant that the jury had rejected Bronson's ac- count. The state circuit court summarily dismissed Grady's petition. *People v. Grady*, 2019 IL App (1st) 163012-U ¶ 1.

Moving on to his state postconviction appeal, Grady, with the aid of counsel, focused on his claim that direct-appeal counsel was ineffective for "failing to challenge the sufficiency of the evidence." The evidence at trial fell short, he contended, for three related reasons. First, the "police

stopped Grady moments after the shooting and found neither a weapon nor robbery proceeds on him." Second, "the key evidence against him was the significantly impeached" and "self-serving testimony of" Bronson, who had ample reason to lie. Third, no forensic or eyewitness testimony established that Grady was the shooter, and the State's case relied on "inferences from minor circumstantial evidence." Grady added that counsel's "erroneous strategy [was] especially noticeable given that Grady's jury expressed doubt about the evidence, asking multiple questions over the course of … deliberation, at the conclusion of which it rendered a split verdict finding Grady guilty of murder but finding that the allegation that Grady personally discharged a weapon had not been proven."

The Illinois Appellate Court affirmed the dismissal after concluding that the evidence presented against Grady was "overwhelming" and thus more than sufficient for a guilty verdict. The court added that because a sufficiency challenge to the evidence would not have had a reasonable probability of success on appeal, Grady could not demonstrate the necessary prejudice under *Strickland v. Washington*, 466 U.S. 668, 692 (1984). The Illinois Supreme Court denied Grady's petition for leave to appeal. *People v. Grady*, 140 N.E.3d 266 (Table) (Ill. 2020).

Grady then petitioned for federal collateral relief pursuant to 28 U.S.C. § 2254. He argued that his counsel on direct ap- peal had been ineffective for failing to raise a sufficiency challenge based on the alleged discrepancy between the general verdict of guilt and the special-verdict finding. He reasoned that pulling the trigger was an "essential element" of his murder conviction, given the State's decision at trial effectively to limit itself to the theory that Grady was the shooter. On that assumption, he contended, it was "metaphysically impossible to

reconcile" the jury's verdicts. At a minimum, he said, this theory was far stronger than the ones state appellate counsel had chosen to raise. (Grady's petition included other claims, but they were not certified for appeal.)

Applying the "doubly deferential" standard of review to ineffective-assistance claims under section 2254, see *Knowles v. Mirzayance*, 556 U.S. 111, 123 (2009), the district judge denied the petition. She reasoned that Grady's insufficient-evidence claim had no merit under Illinois law, which allows for a person charged as a principal to be convicted upon evidence that the person was an aider or abettor. See 720 ILCS 5/5-2; *Ashburn v. Korte*, 761 F.3d 741, 758 (7th Cir. 2014). The judge concluded that the Illinois Appellate Court reasonably ap- plied *Strickland* in ruling that direct-appeal counsel competently declined to argue a doomed position—namely, that the special verdict meant that the murder conviction lacked sufficient evidence. The judge did, however, issue a certificate of appealability because, she said, reasonable jurists could differ on whether the state appellate court adequately addressed the implication of the inconsistent verdicts under *Strickland*. We appointed Kelly Mannion Ellis, of the firm of Winston & Strawn, to act as appellate counsel in this court, and we thank her for her service to her client and the court.

II

On appeal, Grady maintains that the special verdict ne- gated an essential element of the State's theory of the murder—that Grady was the shooter—and that the State's evidence was thus insufficient as a matter of law. This is a hard road to travel. We are empowered to grant relief only if the state court's adjudication of the claim "resulted in a decision that was contrary to, or involved an unreasonable application of, clearly established Federal

law, as determined by the Supreme Court of the United States." 28 U.S.C. § 2254(d)(1); see also *Saxon v. Lashbrook*, 873 F.3d 982, 987 (7th Cir. 2017). Worse (from Grady's standpoint), federal collateral review of ineffective assistance claims is "doubly deferential," because federal courts must give "both the state court and the defense attorney the benefit of the doubt." *Minnick v. Winkleski*, 15 F.4th 460, 468 (7th Cir. 2021) (citing *Burt v. Titlow*, 571 U.S. 12, 15 (2013)).

As a threshold matter, the State contends for the first time on appeal that Grady's claim that appellate counsel was ineffective for failing to raise an inconsistent-verdicts challenge is procedurally defaulted, because he did not fully present it in the state postconviction proceedings. Rather, the State insists, Grady's claim focused on his appellate counsel's failure to argue that the State's case was insufficient because it relied on the "impeached and self-serving testimony" of Bronson, "inferences from minor circumstantial evidence," and the absence of robbery proceeds.

The State may be correct that Grady's claim is procedurally defaulted. To preserve a claim for federal collateral re- view, a petitioner must "fairly present the operative facts and legal principles controlling the claim" through a full round of state-court review, with the factual and legal substance remaining "essentially the same" when the petitioner moves to federal court. *Blackmon v. Williams*, 823 F.3d 1088, 1100 (7th Cir. 2016). Here, however, the focus of Grady's argument has shifted. At the post-conviction stage, he stressed the lack of evidence at trial. He mentioned the inconsistent verdicts, but only to emphasize weakness in the evidence, rather than to argue that the inconsistency itself established that the murder conviction is flawed. Now Grady is saying that as a matter of Illinois law, the jury's special verdict negates an

essential element of Illinois first-degree murder, and thus the guilty verdict cannot stand.

These are two different, albeit related, points, as the Supreme Court itself recognized when it cautioned courts against confusing sufficiency-of-the-evidence review with "the problems caused by inconsistent verdicts." *United States v. Powell*, 469 U.S. 57, 67 (1984); see also *People v. Rosalez*, 2021 IL App (2d) 200086, ¶ 171) ("A sufficiency challenge is independent of any interplay between the general verdict and the special interrogatory.").

But procedural default is not a jurisdictional argument, and so it can be lost if a litigant does not raise it properly. That is what happened here. Procedural default is an affirmative defense, *Perruquet v. Briley*, 390 F.3d 505, 515 (7th Cir. 2004), but the State did not raise it until its appellate brief in this court. The State had thus waived the right to rely on that defense. It knew that Grady had argued in the district court that the jury "render[ed] inconsistent verdicts that were meta- physically impossible to reconcile." In the face of this clear reference to the inconsistent-verdict point, the State did nothing more than briefly acknowledge the argument. It did not mention procedural default. And this is not because the State was unaware of procedural default. In the district court, it argued that Grady procedurally defaulted a different claim (one not certified for appeal). We have ruled that raising the defense of default for one claim but not for another evinces an intent to waive the omitted one. *Eichwedel v. Chandler*, 696 F.3d 660, 669 (7th Cir. 2012). In short, we will reach the merits of Grady's argument.

Unfortunately for Grady, his argument founders at this final stage. The first problem is that inconsistent verdicts are generally not in themselves sufficient to justify federal collateral relief. *See Powell*, 469 U.S. at 69. The reason,

Powell explained, is that seemingly inconsistent verdicts can favor either the defense or the government, but only the defense can take an appeal; the government normally cannot because of double-jeopardy constraints. This asymmetry "militates against review of such convictions at the defendant's behest." *Id.* at 65.

Second, in this particular case, the state court reasonably ruled that direct-appeal counsel was not deficient for declining to advance an inconsistent-verdict challenge, because the omitted argument was meritless as a matter of state law. See 28 U.S.C. § 2254(d)(1). At the time of Grady's trial, Illinois law provided that defendants could not challenge convictions solely on the basis that they were inconsistent with acquittals on other charges. *People v. Jones*, 797 N.E.2d 640, 647 (Ill. 2003) (adopting *Powell* rule). Illinois courts have since recognized that this rule applies to "personal discharge" interrogatories such as the one in Grady's case. See *People v. Alexander*, 2017 IL App (1st) 142170, ¶ 38. Under *Powell* and *Jones*, Grady's in-consistent-verdicts theory would not have had a "reasonable shot" of succeeding. *Walker v. Griffin*, 835 F.3d 705, 709 (7th Cir. 2016). Thus, it was reasonable for the state court to conclude that Grady could not show either defective performance or prejudice for purposes of *Strickland*.

Grady responds that the inconsistent-verdicts argument was nonetheless more promising than the points appellate counsel did raise. A competent appellate lawyer, he urges, would have tried to take advantage of an exception to *Powell* (and presumably *Jones*) that some federal courts have recognized. This exception allows acquittal where a special-verdict finding negates an essential element of an offense. *E.g., United States v. Randolph*, 794 F.3d 602, 612 (6th Cir. 2015). But neither

the Illinois courts nor this court (let alone the Supreme Court) has adopted this approach.

Finally, even if there were such an exception, it would not help Grady. Illinois courts have held that personal discharge of a firearm is not an element of first-degree murder under Illinois law. *Alexander*, 2017 IL App (1st) 142170, ¶ 47. While the State's primary theory at trial was that Grady was the principal and Bronson the accomplice, the prosecution did just enough to preserve an accountability theory under which the jury could find Grady guilty of murder if he aided and abetted Bronson. It so argued at closing; the trial court in- structed the jury that it could consider that theory; and Grady lodged no timely objection. With that much in place, we can see how the two verdicts can be reconciled. The jury could have credited most of Bronson's evidence, while at the same time drawing the line at his effort to convince them that he did not fire the fatal shots. Ample evidence showed that Grady and Bronson were accomplices. The jury may simply have thought that Bronson was the triggerman and Grady was guilty as an accomplice. That reconciles its finding that Grady did not shoot the victim with its finding of his ultimate guilt. There is no reason to think that this reconciliation was not apparent to appellate counsel—or at least so the Illinois Appellate Court reasonably could have concluded.

We therefore AFFIRM the judgment of the district court denying Grady's petition for a writ of habeas corpus.

APPENDIX B

IN THE UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF ILLINOIS EASTERN DIVISION

ARTHUR GRADY, Petitioner, v. DAVID GOMEZ, Warden, Stateville Correctional Center Defendant.	Case No. 20-cv-02530 Judge Mary M. Rowland

MEMORANDUM OPINION AND ORDER

Arthur Grady, an Illinois prisoner, petitions for a writ of habeas corpus under 28 U.S.C. § 2254 [1]. The Petition is denied along with Petitioner's request for an evidentiary hearing. A certificate of appealability is warranted.

I. Background

A federal habeas court presumes that state court factual findings are correct unless rebutted by clear and convincing evidence. *See* 28 U.S.C. § 2254(e)(1); *Jean-Paul v. Douma*, 809 F.3d 354, 360 (7th Cir. 2015) ("A state court's factual finding is unreasonable only if it ignores the clear and convincing weight of the evidence.") (internal quotation marks omitted). The Appellate Court of Illinois

is the last state court to have adjudicated Grady's case on the merits. *People v. Grady*, 2019 IL App (1st) 163012-U (Ill. App. May 10, 2019) (unpublished order) (reproduced at Dkt. 18- 3); *See also People v. Grady,* 2015 IL App (1st) 132160-U (Ill. App. Oct. 16, 2015) (reproduced at Dkt. 18-1). The following sets forth the facts as that court described them and the procedural background of the state criminal and post-conviction proceedings.

A. Factual Background

This case involves the shooting death of Ralph Turner, Jr. on January 30, 2009. *Grady,* 2015 IL App (1st) at ¶ 3. Petitioner Arthur Grady and his co-defendant Aaron Bronson were charged with first-degree murder. *Id.* Aaron Bronson pled guilty and testified against Grady. At trial, the State presented evidence that Grady and Bronson planned to rob Turner after seeing him win money at a casino in Indiana. According to the charges, when Turner resisted during the robbery, Grady shot him. *Id.* at ¶ 4. The State introduced evidence that Turner and his friends were at Horseshoe Casino in Indiana. Once Turner and his friends returned to Chicago, and while one of Turner's friends was dropping Turner off at his house, the SUV Grady was traveling in stopped and a "man in a dark hoodie" got out of the passenger seat. One of Turner's friends and a woman who lived down the block testified they heard gun shots, and saw the SUV driving down the street in reverse just before 4 a.m. *Id.* Aaron Bronson, Grady's co-defendant, testified against Grady at trial in exchange for a guilty plea to first degree murder and twenty-four years in prison. *Id.* at ¶ 7. He testified that while at the casino with Grady, Grady told him that he lost money and he saw a group of men who had "about $30,000" and he thought they should rob them. *Id.* Bronson agreed. *Id.* Later Grady told Bronson to get his

truck because the group was leaving. Bronson got his truck and waited for Grady to tell him that it was time. When Bronson went to pick Grady up, he saw the group of men enter a black Mercedes. *Id.* at ¶ 8. He and Grady followed the Mercedes. until they saw it come to a stop. *Id.* At that point, Grady jumped out of the truck with a gun and ran up to Turner as he was going to his front door. Bronson testified that he then saw Grady hovering over a man lying on the ground. *Id.* Bronson fled to Grady's apartment and waited. When Grady returned, he told Bronson that he did not get any money and he tossed the gun. Bronson also testified that Grady went back out to find the gun and eventually returned with it. *Id.*

Using Grady's cell phone recovered at the scene, video footage from the casino and a photo array lineup, Chicago Police obtained a search warrant for Grady's apartment. During the execution of the warrant, police found two guns, one of which was later determined by an expert to be the murder weapon. *Id.* at ¶ 6.

Grady testified at trial that he and Bronson were not together at the casino. *Id.* at ¶ 9. He denied talking to Bronson about robbing the group. *Id.* Instead, when he and Bronson left the casino, Grady fell asleep and did not wake up until the truck came to a sudden stop. *Id.* at ¶ 10. At that time, Grady saw Bronson get out of the truck, walk up to a man on the sidewalk and engage in conversation. *Id.* Grady testified that he got out of the car when the man punched Bronson, intending to stop the fight, but returned to the truck when he heard two gunshots. *Id.* After leaving the scene, Grady realized he could not find his phone. *Id.* at ¶ 11. According to Grady, the gun found in his apartment belonged to Bronson. *Id.*

The jury "found defendant guilty of first-degree murder, but also found that the state had not proven the

allegation that defendant personally discharged a firearm that proximately caused death to another person." *Id.* at ¶13. At sentencing, the State presented evidence of Grady's criminal history. Grady's grandfather testified in mitigation and discussed defendant's progress and work history. Grady apologized to the victim's family but maintained his innocence regarding Bronson's crime. *Id.* at ¶14. The sentencing court discussed the testimony presented at sentencing and found that the defendant had "very little, if any, rehabilitative potential" and sentenced him to sixty years in prison. *Id.* at ¶15. The trial court later denied Grady's motion to reconsider his sentence.

B. Direct Appeal

On direct appeal, defendant argued his sentence was excessive and the trial court abused its discretion in imposing "what is essentially a life sentence where the jury found that he was not the shooter, but rather, was only accountable for his co- defendant's actions." *Id.* at ¶ 17. The Illinois Appellate Court affirmed the sentence, only making a small correction to reflect days already served. *Id.* at ¶¶ 20-21. The Illinois Supreme Court denied his petition for leave to appeal (PLA). *See* Dkt. 17, Exh. B.

C. Post-Conviction

In July 2016, Grady filed a *pro se* post-conviction petition with sixteen claims, two of which are before this Court. The appellate court dismissed the petition and Grady appealed. Notably, Grady argued on appeal that appellate counsel was only ineffective for failing to challenge the sufficiency of the evidence. *See* 17-J, *Post-conviction Appellant's Brief.* The Illinois Appellate Court found that the evidence against petitioner was "overwhelming" and there was no probability an appellate court would have overturned Grady's conviction. *See* Dkt. 17-C, at ¶ 31. Grady appealed to the Supreme Court on

both the above claim and a prosecutorial- misconduct claim. The Illinois Supreme Court denied the PLA. *See* Dkt. 17-D.

II. Discussion

A. Request for Evidentiary Hearing

Grady requests an evidentiary hearing (Dkt. 23, at 37), but provides no arguments in his petition or his reply as to why an evidentiary hearing is necessary or appropriate.[1] The Antiterrorism and Effective Death Penalty Act of 1996 (AEDPA) governs the availability of an evidentiary hearing on federal habeas review, and generally bars them except in narrow exceptions. *See* 28 U.S.C. §§ 2254(e)(2)(A), (B); *see also*. *Ward v. Jenkins*, 613 F.3d 692, 698 (7th Cir. 2010). When the facts are in dispute a court must hold a hearing if the applicant did not receive a full and fair evidentiary hearing in state court. However, an evidentiary hearing is barred when not requested at every stage in state court unless Grady shows his claim relies on a "new constitutional law … that was previously unavailable" or "a factual predicate that could not have been discovered through the exercise of due diligence" when there is "clear and convincing evidence that but for constitutional error, no reasonable factfinder would have found the applicant guilty of the underlying offense." *See* 28 U.S.C. §§ 2254(e)(2); *see also Williams v. Taylor*, 529 U.S. 420, 120 S. Ct. 1479 (2000). Grady did not request an evidentiary hearing at every stage in state court and therefore is barred from requesting one here given that he has not alleged a claim that relies on new constitutional law nor facts that could not have been

[1] Grady filed a document entitled a Traverse Introduction on March 31, 2021. [23] The Court accepts this as Grady's reply brief that was due on January 8, 2021. [20].

discovered in earlier proceedings. Grady's request for an evidentiary hearing is denied.

B. Excessive Sentence by Trial Court

Grady claims the trial court abused its discretion when it sentenced him to sixty years in prison despite the jury returning a special verdict that they were unable to find he was holding the weapon that killed Turner but finding him guilty of first- degree murder. Grady cites no case law to support his contention that the jury's verdict was insufficient to support a sixty-year sentence. Dkt. 1 at 7. The sentence falls within the guideline range in Illinois for first degree-murder. 730 ILCS 5/5-8-1. The Seventh Circuit has held that "in non-capital felony convictions, a particular offense that falls within legislatively prescribed limits will not be considered disproportionate unless the sentencing judge has abused his discretion." *Henry v. Page,* 223 F.3d 477, 482 (7th Cir.2000) *(quoting United States v. Vasquez,* 966 F.2d 254, 261 (7th Cir.1992)). As the Illinois Appellate Court found, there is no evidence that Grady's sentence was based on any abuse of discretion.

The distinction between the general verdict form and special verdict form do not provide a basis to find the trial court judge abused his discretion. The record from the state court indicates that the "trial court was well aware of the facts in the case, including the jury's finding that the State had not proved defendant personally discharged the firearm." *Grady,* 2015 IL App. (1st) 132160-U, at *4. Illinois law specifically allows the state to prosecute those associated with a crime, even if they themselves did not actually commit the crime meaning, the trial court judge was within his bounds to sentence Grady within the legislatively authorized range for first degree murder. *See* 720 ILCS 5/5-2-3. Grady is not entitled to a writ of habeas corpus based on his excessive sentence claim. *See United*

States ex rel Hernandez v. Pierce, 429 F. Supp. 918, 928 (N.D. Ill. Apr. 20, 2006) (holding that a state prisoner's excessive sentence claim is not entitled to a writ of habeas corpus if it falls within state law guidelines); s*ee also Page,* 223 F.3d at 482 (holding a sentence authorized by Illinois law was not based on an abuse of discretion).

C. Ineffective Assistance of Appellate Counsel for Failing to Challenge the Sufficiency of Evidence

Grady argues that appellate counsel was ineffective for failing to raise insufficiency of evidence on direct appeal. Dkt. 1 at 9. Grady contends that because the jury did not find the essential element that Grady shot Turner, he could not be convicted of murder and therefore, his appellate counsel's failure to raise this claim directly changed the likely outcome of his direct appeal. *Id.* In his reply, Grady raises two instances where appellate counsel failed to challenge the sufficiency of the evidence:

> "(1) where the jury found the evidence insufficient to convict Petitioner of personally discharging the firearm that proximately caused Turners [sic] death but found him guilty of first degree intentional murder of Ralph Turner that had to have occurred with the same firearm the jury acquitted him of personally discharging (citations omitted); (2) where the inherently suspicious accomplice testimony of [the] states [sic] key witness Aaron Bronson was uncorroborated, incredible and unreliable to sustain conviction upon proof beyond a reasonable doubt. (citations omitted).

Dkt. 23, at 5-6. To receive habeas relief on an ineffective assistance of counsel claim, Grady must meet the familiar performance-and-prejudice standard set forth in *Strickland v. Washington*, 466 U.S. 668, 104 S. Ct. 2052,

80 L. Ed. 2d 647 (1984). Under *Strickland*, Grady must show that (1) his attorney's performance fell below an objective standard of reasonableness and (2) he was prejudiced by that deficient performance. *Id.* at 687-88. To satisfy the second element, Grady must demonstrate that "there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different." *Id.* at 694. Overall, judicial review of counsel's performance "must be highly deferential" and "every effort [must] be made to eliminate the distorting effects of hindsight." *Id.* at 689; *see also United States v. Lathrop*, 634 F.3d 931, 937 (7th Cir. 2011).

On habeas review, the inquiry is doubly deferential: not only must the Court presume that "the challenged action might be considered sound trial strategy," *Strickland*, 466 U.S. at 689 (internal quotation marks omitted), but under AEDPA this Court must also defer to the state court's application of *Strickland* unless it is objectively unreasonable. *See Knowles v. Mirzayance*, 556 U.S. 111, 123, 129 S. Ct. 1411, 173 L. Ed. 2d 251 (2009). To be clear, the Court is not deciding whether the state court's determination was correct under *Strickland,* but rather whether it "produced an answer within the range of defensible positions." *Taylor v. Bradley*, 448 F.3d 942, 948 (7th Cir. 2006) (internal quotation marks omitted). "[B]ecause the *Strickland* standard is a general standard, a state court has even more latitude to reasonably determine that a defendant has not satisfied that standard." *Knowles*, 556 U.S. at 123. We address each of Grady's complaints of ineffective assistance in turn.

1. *Inconsistent Verdicts*

Grady alleges his appellate counsel failed to raise a sufficiency of the evidence claim regarding the inconsistent verdicts returned by the jury, and had his

counsel done so, his verdict would have been overturned. He asserts that had counsel raised sufficiency of the evidence, the appellate court would have found that "irrational jury verdicts establish [the] state[] failed to prove [the] identity of the shooter beyond a reasonable doubt" and thereby overturn his conviction. Grady further asserts that the Illinois Appellate Court neglected to hear his ineffective assistance of counsel claim regarding inconsistent verdicts, and therefore, this Court should review his claim *de novo*.

Under *Strickland,* Grady must show that but for counsel's failure to raise this claim on direct appeal, the result would have been different. Grady has not met that burden. As discussed in terms of Grady's excessive sentence claim, Illinois law explicitly allows the state to prosecute, convict and sentence those involved in *some* way with a crime as legally accountable for the entire crime. *See* 720 ILCS 5/5-2-3. Illinois law holds that "a person charged as a principal can be convicted upon evidence showing he was in fact only an aider or abetter." *Ashburn v. Korte*, 761 F.3d, 741, 758 (7th Cir. 2014). In fact, even when a defendant is "completely unaware" of his co- defendant's intentions, he will still be held legally accountable for the crimes committed by those in the group. *Id.* at 758-59.

Even if appellate counsel would have raised a sufficiency of the evidence claim on direct appeal, it would not have been a meritorious claim for Grady. It was objectively reasonable for appellate counsel to conclude the same. Therefore, Grady's ineffective assistance of counsel claim fails in this regard.

2. *Aaron Bronson's testimony*

The Illinois Appellate Court held that appellate counsel's performance was not deficient because appellate

counsel declined to raise an argument that Aaron Bronson's testimony was inherently unreliable. *Grady*, 2019 IL App. (1st) 163012-U, at *1. In making this determination, the appellate court first addressed whether Grady's claim would have been successful if raised on direct appeal. *Id.* at 5. The court noted that there were several other witnesses that testified at Grady's trial, video footage from the casino featuring Grady, and Grady's cell phone found near Turner's body, all creating overwhelming evidence that had "appellate counsel [ ] challenged the sufficiency of the evidence to sustain defendant's conviction on direct appeal, there would not have been reasonable probability that this court would have overturned [the] conviction." *Id.* at 6. The Illinois Appellate Court also found that Grady's argument that Bronson's testimony was "significantly impeached", was "unavailing" because it "corroborated the sequence of events as related by the other witnesses." *Id.* 5. Because the appellate court found on post-conviction review that there was no reasonable probability that it would have overturned the conviction if an attack on Bronson's reliability was raised by appellate counsel, the Illinois Appellate Court found that Grady "suffered no arguable prejudice from counsel's failure to challenge his conviction on direct appeal." *Id.*

This determination was neither contrary to nor an unreasonable application of Supreme Court precedent. The appellate court expressly cited *Strickland* and applied that standard in a thorough and reasonable manner. It was not objectively unreasonable for the appellate court to conclude that Grady's appellate counsel's performance was reasonable, or that Grady was not prejudiced by counsel's performance given that the argument would have failed on direct appeal. Given the deferential standard of review under AEDPA, the Court finds the

state appellate court's decision reasonable. Accordingly, Grady's ineffective assistance of counsel claim fails.

D. Ineffective Assistance of Appellate Counsel for Failing to Raise a Prosecutorial Misconduct Claim

Grady's claim that appellate counsel was ineffective for failing to raise a prosecutorial misconduct claim is procedurally defaulted. Pursuant to 28 U.S. § 2254 (b)(1), "an application for a writ of habeas corpus on behalf of a person in custody . . . shall not be granted unless it appears that the applicant has exhausted the remedies available in the courts of the State." Before petitioning the federal court, "state prisoners must give the state courts one full opportunity to resolve any constitutional issues by invoking one complete round of the State's established appellate review process." *Weaver v. Nicholson*, 892 F.3d 878, 886 (7th Cir. 2018) (quoting *O'Sullivan v. Boerckel*, 526 U.S. 838, 845 (1999)). A habeas claim that was not exhausted in state court will only be granted if it demonstrates a "fundamental miscarriage of justice." *Id.* at 843. This is an exceedingly high standard. "It applies only in the rare case where the petitioner can prove that he is actually innocent of the crime of which he has been convicted." *McDowell v. Lemke,* 737 F. 3rd 476, 483 (7th Cir. 2013).

Grady asserted that appellate counsel was ineffective for failing to raise a prosecutorial misconduct argument in his post-conviction PLA (Dkt 17, Exh F at 3). However, Grady did not raise this issue in the appellate court as required. *See generally* Dkt. 17, Exh. J. Grady also does not argue to this Court any cause for the default or prejudice arising from the default in his briefing. Grady does assert that he is not guilty of first-degree murder, but that does not meet the required standard for a "claim of

innocence" to excuse default. A claim of innocence is only credible when a petitioner "support[s] his allegations of constitutional error with new reliable evidence whether it be exculpatory scientific evidence, trustworthy eyewitness accounts, or critical physical evidence-that was not presented at trial." *Schlup v. Delo,* 513 U.S. 298, 324, 115 S. Ct. 851, 851 (1995). As a result, his petition on this specific claim is procedurally defaulted.

E. A Certificate of Appealability Is Warranted

If Grady wishes to appeal this denial, he must first obtain a certificate of appealability. Under 28 U.S.C.§ 2253, "an appeal may not be taken to the court of appeals from the final order in a habeas corpus proceeding in which the detention complained of arises out of process issued by a state court" unless the circuit justice or judge first issues the certificate. 28 U.S.C.§ 2253(c)(1)(A). A certificate of appealability may issue only when "the applicant has made a substantial showing of the denial of a constitutional right." 28 U.S.C.§ 2253(c)(2). To make a substantial showing, a petitioner must show that "reasonable jurists could debate whether…the petition should have been resolved in a different manner or that the issues presented were adequate to deserve encouragement to proceed further." *Miller-El v. Cockrell,* 537 U.S. 322, 336, 123 S. Ct. 1029, 154 L. Ed. 2d 931 (2003) (internal quotation marks and citations omitted). The Court issues a certificate of appealability on Grady's ineffective assistance of counsel claim because reasonable jurists could differ on the question of whether the state appellate court reasonably addressed the inconsistent verdicts under *Strickland.*

II. Conclusion

For the stated reasons, Grady's Petition for a Writ of Habeas Corpus [1] is denied, and a certificate of appealability will issue.

ENTERED:

s/ John Robert Blakey
John Robert Blakey
United States District Judge

APPENDIX C

2019 IL APP (1ST) 163012-U

NO. 1-16-3012

ORDER FILED MAY 10, 2019

Fifth Division

IN THE

APPELLATE COURT OF ILLINOIS

FIRST DISTRICT

THE PEOPLE OF THE STATE OF ILLINOIS, Plaintiff-Appellee,	)	Appeal from the Circuit Court of Cook County.
v.	)	No. 11 CR 00169
ARTHUR GRADY, Defendant-Appellant.	)	Honorable Erica L. Reddick, Judge, presiding.

JUSTICE HALL delivered the judgment of the court.

Presiding Justice Rochford and Justice Lampkin concurred in the judgment.

ORDER

¶1 *Held*: The trial court's summary dismissal of defendant's *pro se* postconviction petition is affirmed where defendant did not present an arguable claim of ineffective assistance of appellate counsel because he was not prejudiced by counsel's failure to raise a sufficiency of the evidence challenge on direct appeal.

¶2 Defendant Arthur Grady, appeals from the summary dismissal of his *pro se* petition for postconviction relief under the Post-Conviction Hearing Act (the Act) (725 ILCS 5/122-1 *et seq.* (West 2016)). Defendant contends the trial court erred in summarily dismissing his petition because he set forth an arguable claim that his appellate counsel was ineffective for failing to challenge the sufficiency of the evidence on direct appeal. We affirm.

¶3 Following a 2013 jury trial, defendant was found guilty of first degree murder (720 ILCS 5/9-1(a)(1)(West 2012)) and sentenced to 60 years' imprisonment. We affirmed on direct appeal over defendant's argument that his sentence was excessive. *People v. Grady,* 2015 IL App (1st) 132160-U. Because we set forth the facts on direct appeal, we recount them here only to the extent necessary to resolve the issue raised on appeal. See *Grady,* 2015 IL App (1st) 132160-U.

¶4 Defendant's conviction arose from the January 30, 2009, shooting death of Ralph Turner, Jr. Defendant and Aaron Bronson were charged with the murder. Bronson pleaded guilty and testified against defendant. The State's theory of the case was that defendant and Bronson planned to rob the victim, whom they had followed out of

a casino, but, when the victim resisted, defendant shot him.

¶5 The facts adduced at trial show that in the evening hours of January 29, 2009, Turner and his friends Rupert Evans, Robert Currie, Michael Wright and Anthony McGee had dinner at Binion's Steak House located in the Horseshoe Casino in Hammond, Indiana. Evans testified that after dinner, the group went to the casino roulette table to gamble. Currie was doing well gambling and winning money. In order not to spend all his money, Currie would give Turner some casino chips to cash in at the cashier. Evans explained that Turner acted as a "bank" for those winning at the roulette table. Evans left the casino about 2 a.m. on January 30, 2009. While he was at home, he received a call that Turner had been shot and killed. Later in the day, detectives from the Chicago police department came to his home and showed him a photo array. Evans did not identify anyone in the photo array. Later that same day, more detectives came to his home with another photo array. This time, Evans was able to identify defendant's picture from the photo array. On January 31, 2009, Evans went to the police station on 111th Street and viewed a lineup. He identified defendant in the lineup as the person he saw watching him and his friends gambling at the casino two nights before.

¶6 Currie testified that on January 29, 2009, he owned a black Mercedes Benz and he drove his friends Turner, Wright, and McGee to the Horseshoe Casino in Hammond. Currie had a pass for dinner and a table in the VIP room of the casino. After dinner, the group decided to go to the gambling floor to play roulette. Currie testified he was winning at the table and would give some of his chips to Turner to cash in thereby "taking money out of the game." During the course of the evening, Currie won between six

and nine thousand dollars and gave Turner a casino chip. After Currie finished gambling, he gave Turner, Wright and McGee a ride home. The group left the casino and went to the valet to retrieve Currie's car. On the way home, Currie drove, while Wright sat in the front passenger seat and Turner and McGee were in the back seat. When Currie got to Turner's home, Turner and McGee exited the car. Currie drove Wright home and then drove to his house. When Currie arrived at his house he received a phone call from McGee, who told him that Turner had been shot. Later that day, the police showed Currie a photo array but he could not identify anyone. Currie viewed a lineup on January 31, 2009, and identified defendant as being at the casino on January 30 watching them play roulette.

¶7 McGee testified that when the group finished gambling, Currie drove him, Turner, and Wright home. When Currie arrived at Turner's home on 81st Street and Eberhart Avenue, McGee and Turner exited the car and talked for a short while in front of Turner's home. McGee then walked to his car which was parked down the street from Turner's home. As he did so, he saw a large dark colored truck travelling north down the street. McGee stood by the parked cars, believing that the truck was going to pass him. Instead, the truck stopped by Turner's home. McGee thought it was Turner's son, who had a dark colored truck. McGee saw an individual exit the truck. McGee described the person as tall and thin and about as tall as Turner. The person was wearing dark clothing and a dark colored "hoody." As McGee was about to open his car door, he heard a shot. He ran toward Turner's home but heard a second shot and hid between two parked cars. McGee ran to the corner and turned onto 82nd Street where he called Turner's wife and told her to call 911. McGee also called

911. McGee was unable to identify anyone in a photo array or lineup.

¶8 Pamela Snow Woodard testified that she is Turner's sister and lived in the same building as Turner but on the first floor. On January 30, 2009, Woodard was awoken from her sleep by a gunshot. Woodard looked out her front window and saw a body on her front lawn and a man in a hoody standing over the body going through the pockets. Woodard called 911. Woodard was unable to identify anyone in a lineup.

¶9 Debra Ann Foster-Bonner testified that on January 30 at approximately 3:40 a.m., she was awoken by two loud noises. Foster-Bonner looked out her front window and saw a large black Sports Utility Vehicle (SUV) driving in reverse on Eberhart. Foster-Bonner observed a tall, thin man dressed in dark pants and a large dark jacket with a hood stand in front of her windows. Foster-Bonner continued looking out her window and saw the man walk towards 82nd Street.

¶10 Chicago police officer Adam Rose testified that on January 30, 2009, a little before 4 a.m., he was on routine patrol and monitored a call of a shooting. The call described the offender as a male black wearing dark clothing. Rose saw defendant, who fit the description, about three blocks away from the scene of the shooting at approximately 355 East 83rd Street. Rose stopped defendant to perform a field interview and handcuffed him for his protection. Rose searched defendant and took his driver's license to ascertain if he had any outstanding warrants. Rose noted that defendant's address on the driver's license was for a residence on the 6000 block of South Stony Island Avenue which was about three and a half miles away. Rose testified defendant was walking in

a direction away from the Stony address. Rose did not detain defendant because there were no active warrants or investigative alerts for defendant.

¶11 Chicago police officers arrived on the scene and discovered Turner's body lying face up with blood on his chest. Turner's pants pocket was torn off and lying down the street from his body. The officers found a casino chip under his body and a cell phone on the street. Detective Barsch testified that he tried to determine the owner of the cell phone. When Barsch opened the cell phone, he observed a picture of a young girl that was the screensaver and the name "Nakkia" was printed across the front of the picture. Barsch then opened the call log and observed there were several calls to and from a person named Aaron. Barsch also observed phone numbers for "dad" and another that said "crib." After speaking to Turner's family members, Barsch determined the cell phone did not belong to Turner. Barsch also testified that, after speaking to McGee, he went to the casino and obtained surveillance video footage. Based on the footage and the cell phone recovered at the scene, the police compiled a photo array, and Barsch obtained a search warrant for defendant's apartment. There, defendant was arrested and two handguns were recovered from inside a speaker in the rear bedroom. When Barsch went into the middle bedroom of the apartment, he observed a photo that was the same photo of "Nakkia" as on the cell phone recovered from the crime scene. The guns were sent to the Illinois State Police Crime Laboratory where it was determined that one of the guns fired the bullets recovered from Turner's body. The State introduced into evidence the surveillance video obtained from the casino which showed defendant wearing a black hoody and watching the roulette table as Turner and his friends played roulette.

¶12 Aaron Bronson, the co-defendant, testified that he shared an apartment with defendant and defendant's cousin Shawana Chester on 6300 South Champlain Avenue. Bronson also lived in South Bend Indiana. When Bronson lived on Champlain he would stay in the front bedroom of the apartment while defendant used the middle bedroom and Shawana used the back bedroom. After Bronson moved out of the apartment, Shawana moved into the front bedroom. In January of 2009, Bronson owned a dark blue Chevy Tahoe SUV. Bronson testified that on January 29, 2009, he and defendant went to the Horseshoe Casino in Hammond Indiana to gamble. Bronson wore a brown and tan hoody with a brown coat while defendant wore a black hoody, black jeans and a black hat. Bronson played poker at the casino but did not play cards with defendant. At some point in the evening, defendant approached Bronson and told him that he had lost all his money but some guys were playing roulette and they had about $30,000 in winnings. Defendant suggested to Bronson that they should rob the men. Bronson agreed.

¶13 Sometime later, defendant approached Bronson and told him that the men were leaving the casino. Bronson went to the parking lot to get his truck while defendant monitored the men. Bronson called defendant when he got to his truck and defendant told him that the men were in a "black Benz." Bronson picked defendant up and they began following the black Mercedes back to Chicago. When the black Mercedes turned onto Eberhart, Bronson pulled his car behind it and saw two men exit from the back seat of the Mercedes. Bronson testified he told defendant not to exit his truck but defendant said he needed the money and jumped out. Defendant was wearing his hood up and had a mask to cover his face. Bronson watched as the Mercedes pulled away. Bronson saw defendant approach Turner, but Turner "stole on him." Bronson explained that

"stole on" means the victim fought back and punched defendant in the face knocking him to the ground. As Bronson started to drive in reverse, he heard two to three gunshots.

¶14 Bronson drove back to the apartment on Champlain and waited for defendant, who arrived at the apartment about 6 a.m. Bronson and defendant talked about what had happened. Defendant told Bronson "there ain't no money." Defendant then went to Bronson's truck to search for his phone. Bronson testified that defendant said he threw the gun away but was going back to retrieve it because the gun may have his fingerprints on it. Bronson saw the gun later on that morning with defendant when defendant came back to the apartment. Bronson went back to South Bend until his arrest. He acknowledged that he entered into an agreement with the State to plead guilty to first degree murder and a sentence of 24 years' imprisonment in exchange for his truthful testimony.

¶15 On cross-examination, Bronson testified that the gun defendant used to commit the murder once belonged to Bronson but he sold it to defendant. Bronson admitted telling the police that defendant was driving his truck back to Chicago and that he jumped into the back seat to look for gloves and something to cover his face. On redirect examination, Bronson said he is "snitching" on defendant because defendant snitched on him.

¶16 Defendant testified that on January 29, 2009, he was at the Horseshoe Casino with Bronson. Defendant walked around the casino watching other gamblers play, while Bronson was at a table gambling. Defendant testified he stopped at Turner's table to see why people were shouting. Defendant explained that whenever he heard people shouting in the casino, he would go over to the table

to see what the excitement was. Defendant and Bronson decided to leave the casino. Bronson went to the parking garage to pick up his truck while defendant waited in the valet area of the casino. Bronson drove up and defendant got into the truck. Defendant plugged in his cell phone to charge and fell asleep. He was awoken when the truck came to a sudden stop. Defendant did not recognize where he was. He looked out of the window and saw two men on the sidewalk. The men started walking in opposite directions. Bronson jumped out of the truck and approached one of the men. The man punched Bronson and he fell to the ground. Defendant got out of the passenger seat in order to break up the fight. He then heard two gunshots. Defendant jumped into the driver's seat of the truck and drove in reverse down the block.

¶17 Defendant parked the truck about two blocks away and realized he did not have his cell phone. He decided to walk to a nearby gas station to make a phone call. On his way to the station, he was stopped by the police and they ultimately let him go. Defendant eventually went home and went to sleep. Bronson came home and the pair discussed what happened after defendant left the scene. Defendant was arrested later that afternoon. He testified that the gun recovered from his apartment belonged to Bronson. Defendant testified he wore a black coat, black hoody, black jeans and a black hat on the night of the shooting and Bronson wore a brown coat with a design on the back and a brown hoody. Defendant denied talking to Bronson about robbing anyone.

¶18 The jury found defendant guilty of first degree murder and the court denied his motion for new trial. After a hearing, the court sentenced him to 60 years' imprisonment. We affirmed on direct appeal over

defendant's contention that his sentence was excessive. *Grady,* 2015 IL App (1st) 132160-U.

¶19 On July 6, 2016, defendant filed a *pro se* postconviction petition raising numerous claims. In pertinent part, defendant argued that he received ineffective assistance of appellate counsel based on counsel's failure to challenge the sufficiency of the evidence to sustain his conviction on direct appeal.

¶20 On September 28, 2016, the trial court issued a written order dismissing defendant's *pro se* postconviction petition as frivolous and patently without merit. Specifically, the court found that defendant's claim of ineffective assistance of appellate counsel was without merit where he did not suffer prejudice from counsel's decision to not challenge the sufficiency of the evidence on appeal.

¶21 In this court, defendant contends that the trial court erred in summarily dismissing his petition because he presented an arguable claim of ineffective assistance of appellate counsel based on counsel's failure to raise a sufficiency of the evidence argument on direct appeal.

¶22 The Act (725 ILCS 5/122-1 *et seq.* (West 2014)) provides that the circuit court adjudicates a petition for postconviction relief in three distinct stages. *People v. Hodges,* 234 Ill. 2d 1, 10 (2009). At the first stage, the trial court must independently review the petition, taking the allegations as true, and determine whether the petition is frivolous or patently without merit. 725 ILCS 5/122-2.1(a)(2) (West 2014). The court may dismiss a petition only if it is " ' frivolous or is patently without merit. ' " *People v Cotto,* 2016 IL 119006, ¶ 26 (quoting 725 ILCS 5/122- 2.1(a)(2) (West 2014). A petition is frivolous or

patently without merit if it " 'has no arguable basis *** in law or fact.' " *People v. Papaleo,* 2016 IL App (1st) 150947, ¶ 19 (quoting *People v. Hodges,* 234 Ill. 2d 1, 11-12 (2009)). At this stage, a defendant need only "allege enough facts to make out a claim that is arguably constitutional for purposes of invoking the Act." *Hodges*, 234 Ill. 2d at 9. We review the summary dismissal of a petition *de novo*. *Id.*

¶23 The constitutional right to effective assistance of counsel applies to counsel on a direct appeal. *Evitts v. Lucey*, 469 U.S. 387, 396 (1985). Claims of ineffective assistance of appellate counsel are governed by the same test used in assessing claims of ineffective assistance of trial counsel set forth in *Strickland v. Washington,* 466 U.S. 668 (1984). *People v. Lacy,* 407 Ill. App. 3d 442, 457 (2011).

¶24 In the context of first stage postconviction proceedings, a defendant must show it is arguable that (1) appellate counsel's failure to raise an issue on direct appeal was objectively unreasonable, and (2) defendant was prejudiced by counsel's deficient performance *i.e.* there is a reasonable probability that the appeal would have been successful. *People v. Petrenko,* 237 Ill. 2d 490, 497 (2010). The failure to establish either prong of the *Strickland* test defeats a claim of ineffectiveness. *People v. Henderson*, 2013 IL 114040, ¶ 11. If we can dispose of defendant's claim on the basis that he suffered no prejudice, we need not address whether counsel's performance was objectively unreasonable. *People v. Salas,* 2011 IL App (1st) 091880, ¶ 91. Appellate counsel need not brief every conceivable issue on appeal and may refrain from developing nonmeritorious issues without violating *Strickland. People v. Guerrero*, 2018 IL App (2d) 160920, ¶ 43. Therefore, unless the underlying issue is

meritorious, the defendant suffers no prejudice from counsel's failure to raise it on appeal. *People v. Childress*, 191 Ill. 2d 168, 175 (2000).

¶25 Here, defendant has alleged that his appellate counsel was ineffective for failing to argue on direct appeal that the State did not prove him guilty of first degree murder beyond a reasonable doubt. In order to assess the merit of this underlying issue we must determine whether it would have been successful if raised on direct appeal. For the reasons that follow, we find that it would not.

¶26 The standard of review on a challenge to the sufficiency of the evidence is whether after viewing the evidence in the light most favorable to the prosecution, any rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt. *People v. Wheeler,* 226 Ill. 2d 92, 114 (2007). This standard is applicable in all criminal cases regardless whether the evidence is direct or circumstantial. *People v. Herring,* 324 Ill.App.3d 458, 460 (2001); *People v. Campbell,* 146 Ill. 2d 363, 374-75 (1992). The trier of fact is responsible for assessing the credibility of the witnesses, weighing the testimony, and drawing reasonable inferences from the evidence. *People v. Hutchinson,* 2013 IL App (1st) 102332 ¶ 27; *People v. Ortiz,* 196 Ill. 2d 236, 259 (2001). When considering the sufficiency of the evidence, it is not the reviewing court's duty to retry the defendant. *People v. Beauchamp,* 241 Ill. 2d 1, 8 (2011); *People v. Collins,* 106 Ill. 2d 237, 261 (1985). The State must prove each element of an offense beyond a reasonable doubt. *People v. Siguenza-Brito*, 235 Ill. 2d 213, 224 (2009). This court will not overturn a conviction unless the evidence is "so unreasonable, improbable, or unsatisfactory that it justifies a reasonable doubt of defendant's guilt." *People v. Wheeler*, 226 Ill. 2d 92, 115 (2007).

¶27 In arguing that a challenge to the sufficiency of the evidence would have been successful on direct appeal, defendant does not dispute any of the elements of the offense of first degree murder. Rather, he essentially claims that he was not the offender. In support of this argument, he points to the fact that he was stopped by police shortly after the shooting and police did not recover a weapon or robbery proceeds from his person. He also maintains that the "key evidence" against him, the testimony of codefendant Bronson, was significantly impeached.

¶28 We are not persuaded by defendant's argument where the evidence presented against him was overwhelming and thus sufficient for the jury to reasonably conclude that he was guilty of the first degree murder of Turner. Rupert Evans and Robert Currie testified to seeing defendant at the casino watching them play roulette. Both identified defendant in a lineup. Video surveillance footage from the casino shows defendant, wearing a black hoody and black jacket, watching the victim play roulette. McGee testified that, shortly before the shooting, he saw a truck stop by Turner's home and a person exit the truck. He described the person as tall and thin, and wearing dark clothing and a dark hoody. McGee then heard a gunshot. After hearing another gunshot, called 911. Pamela Woodard, Turner's sister, testified she heard a gunshot shot and looked out her window. She saw a body on the ground in front of her house and a man in a hoody going through the pockets of the man who was on the ground. A neighbor, Foster-Bonner, who lived on the block heard two loud noises and looked out her window. She saw a dark SUV travelling in reverse down her block. She also saw a tall, thin man dressed in dark pants and a large dark jacket with a hood stand in front of her windows. The man then walked towards 82nd Street. Chicago police officer Rose testified

he responded to a call of a shooting and was given a description of a male black in dark clothing. Rose saw defendant, who matched the description, approximately three blocks from scene of the shooting. Defendant's cell phone was recovered near Turner's body. The murder weapon was recovered from defendant's apartment.

¶29 In addition to this evidence, co-defendant Bronson testified and corroborated witnesses' version of events. Bronson related that he and defendant went to the casino to gamble. Defendant lost all himsmoney but saw Turner and his friends winning at the roulette table and suggested they should rob the men. Bronson agreed and followed Turner and his friends home. When defendant got out of Bronson's truck to rob Turner, Turner fought back and struck defendant in the face knocking him down. Bronson heard a gunshot. He put his truck into reverse and drove away. Bronson waited for defendant at their apartment. When defendant came home and told Bronson what had happened, Bronson fled to Indiana. Bronson explained that he once owned the gun defendant used to murder Turner, but that he had sold it to defendant. This evidence, and the reasonable inferences therefrom, was sufficient for the trier of fact to find defendant guilty of first degree murder. See *People v. Brown*, 2013 IL 114196, ¶ 71 (citing *Wheeler*, 226 Ill. 2d at 117) (The trier of fact is not required to disregard inferences that flow from the evidence or search out all possible explanations consistent with innocence and raise them to a level of reasonable doubt).

¶30 In reaching this conclusion, we note that contrary to defendant's argument the fact that Officer Rose did not recover a weapon or robbery proceeds from defendant is not surprising given that the evidence showed defendant disposed of the weapon after the shooting and Turner did

not have money on his person. Bronson testified that, after the shooting, defendant told him that he threw the gun away and that he was going back to retrieve it because it may have fingerprints. Defendant also told Bronson that "there ain't no money." We also note that defendant'sargumentregardingBronson'stestimonybeings ignificantlyimpeachedis unavailing where, as mentioned, Bronson's testimony corroborated the sequence of events as related by the other witnesses.

¶31 Thus, if appellate counsel had challenged the sufficiency of the evidence to sustain defendant's conviction on direct appeal, there would not have been reasonable probability that this court would have over turned his conviction. *People v. Wheeler*, 226 Ill. 2d 92, 115 (2007) (a reviewing court will not overturn a conviction unless the evidence is "so unreasonable, improbable, or unsatisfactory that it justifies a reasonable doubt of defendant's guilt."). Accordingly, defendant suffered no arguable prejudice from counsel's failure to challenge his conviction on direct appeal, and therefore the trial court did not err in summarily dismissing defendant's postconviction petition as frivolous and patently without merit.

¶32 For the foregoing reasons, we affirm the judgment of the circuit court of Cook County.

¶33 Affirmed.

APPENDIX D

IN THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS COUNTY DEPARTMENT, CRIMINAL DIVISION

PEOPLE OF THE STATE OF ILLINOIS, Plaintiff-Respondent, v. ARTHUR GRADY, Defendant-Petitioner.	)	Post-Conviction Petition 11-CR-00169-01 Honorable Erica L. Reddick, Judge Presiding

ORDER

Petitioner, Arthur Grady, seeks post-conviction relief from the judgment of conviction entered against him on June 19, 2013. Following a jury trial, petitioner was convicted of first-degree murder. The trial court subsequently sentenced petitioner to 60 years of imprisonment in the Illinois Department of Corrections. As grounds for post-conviction relief, petitioner claims: (1) the State and two detectives committed perjury; (2) ineffective assistance of trial counsel; (3) the trial court made erroneous credibility determinations; (4) the trial

court improperly influenced the State to change its theory during the arguments on petitioner's motion to quash; (5) the trial court erred in denying petitioner's motion to quash; (6) the trial court erred in denying petitioner's motion to bar Aaron Bronson's new statements; (7) the State improperly vouched for Aaron Bronson's credibility; (8) the State erred by telling the jury that it may find petitioner guilty under a theory of accountability, and the trial court also erred by allowing an accountability instruction; (9) the trial court was biased against petitioner and his counsel; (10) the State failed to prove petitioner guilty beyond a reasonable doubt; and (11) ineffective assistance of appellate counsel.

BACKGROUND

Petitioner's conviction stems from the fatal shooting of Ralph Turner, Jr. on January 30, 2009 in Chicago. Petitioner was charged along with Aaron Bronson, who pled guilty and testified against petitioner. The State's theory was that petitioner and Bronson planned to rob the victim, whom they had followed out of a casino, but that when the victim resisted, petitioner shot him. The medical examiner who conducted the autopsy of the victim testified that the cause of death was one gunshot wound to the chest and one gunshot wound to the thigh.

At trial, the State presented evidence that on the night in question, the victim and a group of his friends went to the Horseshoe Casino in Hammond, Indiana. At the end of the evening, one of the men drove the victim and one of his friends to the victim's house in Chicago and dropped them off. The victim's friend testified that as he walked in the street toward his car, an SUV stopped in front of the victim's house and a man in a dark hoodie got out of the passenger seat. The victim's friend heard two gunshots before he ran away. A woman who lived down the block

from the victim testified that she heard two loud noises just before 4 a.m. She then looked out her window and saw an SUV driving in reverse down the street.

A Chicago police officer testified that when he was on his way to the scene, he saw a person matching the general description given by the dispatcher. The officer stopped the man, identified in court as petitioner, and conducted a protective pat down search, but found no weapons. The officer found no investigative alerts or active warrants for petitioner in the police computer system, so he released petitioner.

Using information gleaned from a cell phone recovered at the scene of the shooting, video surveillance footage from the casino, and a photo array identification made by one of the victim's friends, a Chicago police detective identified petitioner as a suspect in the shooting and obtained a search warrant for his address. When the warrant was executed the day after the shooting, the police recovered two guns. A firearm expert determined that the fired bullet and bullet jacket found inside the victim's body were fired from one of the guns. Petitioner was arrested at his residence, while Aaron Bronson was arrested nine months later in Indiana.

Aaron Bronson testified that he pled guilty to first-degree murder in the instant case in exchange for a sentence of 24 years in prison. Bronson testified that on the night in question, he and petitioner went to the Horseshoe Casino to gamble. At some point, petitioner told Bronson that he had lost all his money, but that he saw a group of men who had about $30,000 and thought they should rob them. Bronson agreed to the plan. Later, petitioner approached Bronson, told him the group was leaving, and directed Bronson to get his truck. Bronson drove up to the valet and saw the group of men get into a

Mercedes. After petitioner got into Bronson's truck, Bronson followed the Mercedes to Chicago. Bronson testified that the Mercedes stopped briefly and two of its passengers got out. Petitioner jumped out of the truck with a gun and ran up to the victim. The victim punched petitioner, who fell down toward the ground. Bronson put his truck in reverse and started to drive away. As he did so, he saw the second of the Mercedes' passengers running across the median and heard two or three gunshots. Bronson also saw petitioner "hovered over" a man lying on the ground. Bronson did not wait for petitioner, but fled to petitioner's apartment. Petitioner returned several hours later, reported that "he ain't get no money, and he got pulled over that night by the police and they let him go, and he lost his phone." Petitioner also reported that he threw the gun, but told Bronson that he was going to go back to get it because it might have his fingerprints on it. Petitioner left, and when he came back, Bronson saw him with the gun. Bronson left for Indiana the next day.

Petitioner testified that he and Bronson went their separate ways at the casino. Petitioner walked around the casino to pass the time until Bronson was ready to leave. Whenever petitioner heard people clapping and cheering, he would walk up to them to see what was going on. Among the tables he walked up to was the victim's. Petitioner denied talking with Bronson about robbing anyone. Eventually, petitioner and Bronson decided to leave. Bronson got his truck and picked up petitioner at the valet area. Petitioner testified that he plugged his cell phone into the charger and went to sleep. When the truck came to a sudden stop, petitioner woke up. Petitioner looked out the window and saw two men walking on the sidewalk in opposite directions. Bronson got out of the truck, approached one of the men on the sidewalk, and engaged him in conversation. The man punched Bronson and both

men fell to the ground. Petitioner saw the second man turn back and head toward the fight. Petitioner got out of the truck, intending to stop the fight, but when he heard two gunshots, he got back in the truck, put it in reverse, and drove off. About two blocks away, petitioner parked the truck. He could not find his cell phone, so he walked to a nearby gas station. While he was walking, he was stopped by the police, but then let go. Eventually, petitioner went home, where the police arrested him the next day. According to petitioner, the gun recovered from his apartment was Bronson's.

PROCEDURAL HISTORY

On direct appeal, petitioner argued that: (1) his sentence was excessive and (2) his mittimus should be corrected to reflect 1,600 days of presentencing custody credit. On October 16, 2015, the appellate court affirmed petitioner's sentence and ordered that his mittimus be corrected. *People v. Grady*, No. 1-13-2160 (2015) (unpublished order under Supreme Court Rule 23). On January 20, 2016, the Illinois Supreme Court denied petitioner's petition for leave to appeal. *People v. Grady,* 2016 Ill. LEXIS 199.

ANALYSIS

On July 6, 2016, petitioner filed the instant *pro se* petition for post-conviction relief, which is before this court for an initial determination of its legal sufficiency pursuant to section 2.1 of the Post-Conviction Hearing Act ("the Act"). 725 ILCS 5/122-2.1 (West 2016). A post-conviction petition is a collateral attack on a prior conviction, *People* v. *Simms*, 192 Ill. 2d 348, 359 (2000), and is limited to constitutional issues which were not and could not have been raised on direct appeal. *People v. King,* 192 Ill. 2d 189, 192-93 (2000). When petitioner raises non-

meritorious claims, the court may summarily dismiss them. *People v. Evans*, 186 Ill. 2d 83, 89 (1999).

Under the Act, the petitioner is not entitled to an evidentiary hearing; rather, to obtain a hearing, the petitioner has "to make a substantial showing of a violation of a constitutional right." *People v. Cloutier*, 191 Ill. 2d 392, 397 (2000); *People v. Johnson*, 191 Ill. 2d 257, 268 (2000). However, a *pro se* post-conviction petition may be summarily dismissed as frivolous or patently without merit during the first stage of post-conviction review unless the allegations in the petition, taken as true and liberally construed, present the gist of a valid constitutional claim. *People v. Edwards*, 197 Ill. 2d 239, 244 (2001). A petition is frivolous and patently without merit when the petition bas no arguable basis in either fact or law. *People v. Hodges*, 234 Ill. 2d 1, 23 (2009). The Act requires that a petition be supported by affidavits, records, or other evidence supporting its allegations. 725 ILCS 5/122-2. The failure to either include these necessary items or explain their absence is fatal to a petition for post-conviction relief and may alone justify the summary dismissal of the petition. *People v. Collins*, 202 Ill. 2d 59, 66 (2002); *but see People v. Allen*, 2015 IL 113135 (summary dismissal based on petitioner's failure to notarize an affidavit is improper at first stage post-conviction proceedings).

Further, post-conviction proceedings are not a continuation of or an appeal from the original case. *People v. Flowers*, 208 Ill. 2d 291, 303 (2004). Therefore, the issues raised on post-conviction review are limited to those that could not be or were not previously raised on direct appeal or in prior post-conviction proceedings. *People v. McNeal*, 194 Ill. 2d 135, 140 (2000). "Rulings on issues that were previously raised at trial or on direct appeal are *res judicata*, and issues that could have been raised, but were

not, are waived." *People v. Miller*, 203 Ill. 2d 433, 437 (2002). Post-conviction petitions may be summarily dismissed at the first stage based on the doctrines of waiver and *res judicata*. *People v. Blair*, 215 Ill. 2d 427, 442 (2005); *People v. Rogers*, 197 Ill. 2d 216, 221 (2001).

I. PRELIMINARY CONSIDERATION: DOCTRINE OF WAIVER

All of the issues raised by petitioner, except for ineffective assistance of appellate counsel, are barred by the doctrine of waiver. In Illinois, the law is clear: "Rulings on issues that were previously raised at trial or on direct appeal are *res judicata*, and issues that could have been raised, but were not, are waived." *Miller*, 203 Ill. 2d at 437. Moreover, summary dismissal of post-conviction petitions based on the doctrine of waiver is appropriate. *Rogers*, 197 Ill. 2d at 221. Therefore, the above-mentioned issues are procedurally barred by the doctrine of waiver. However, as discussed below, even if these claims were not procedurally barred, they nevertheless fail on the merits.

II. PERJURY

Petitioner advances several claims of perjury against Detectives Weber and Barsch, as well as against the prosecutor, who petitioner claims solicited the detectives' testimony knowing it was false. The United States Supreme Court has recognized that a conviction based upon *false* testimony offends notions of fundamental fairness. *Giglio v. United States*, 405 U.S. 150, 153 (1972). Accordingly, Illinois courts have aptly characterized perjury as "the mortal enemy of justice." *People v. Shannon*, 28 Ill. App. 3d 873, 878 (1st Dist. 1975). However, where the claims of perjury are merely conclusory in nature and not supported by further allegations of specific facts, the petition may be dismissed

without an evidentiary hearing. *People v. Ashley*, 34 Ill. 2d 402, 411 (1966). Hence, it is incumbent upon petitioner to substantiate his allegations with specific facts establishing the falsity of the trial testimony. *People v. Martin*, 46 Ill. 2d 565, 568 (1970). This means that the petitioner must specify the nature of the alleged perjury, its source, and the evidence which proves that the testimony was false. *Ashley*, 34 Ill. 2d at 411. The petitioner must also demonstrate that there is a "reasonable likelihood that the false testimony could have affected the jury's verdict." *People v. Olinger*, 176 Ill. 2d 326, 345 (1997).

A. RECOVERY OF CELL PHONE

First, petitioner claims that Detectives Weber and Barsch committed perjury when they testified at petitioner's motion to quash hearing that the cell phone recovered at the crime scene was registered to petitioner and 6315 S. Champlain. With the above standard in mind, petitioner's claim fails. Petitioner's claim of perjury stands completely unsupported by any specific facts establishing the falsity of the detectives' testimony. Instead, as evidence of fabrication by the detectives, petitioner merely states that their testimony was contradicted by "evidence [that] was presented by the State attorney showing that the cell phone was registered to Marcell Gray and 501 Stony Island" [sic]. Petitioner fails to specify which evidence presented by the State indicated that the cell phone was registered to Marcell Gray and 501 Stony Island. Furthermore, even if the State did present evidence indicating that the cell phone was registered to Marcell Gray and 501 Stony Island, there is a substantial problem with drawing the inference that such evidence demonstrates that Detectives Weber and Barsch committed perjury. Just because the detectives' testimony

was inconsistent with other evidence, it does not necessarily follow that the detectives' testimony was false. Because petitioner has failed to provide any extrinsic evidence establishing the falsity of the detectives' testimony, he has failed to state a claim for relief. *See People v. Hilliard*, 109 Ill. App. 3d 797, 802 (1st Dist. 1982) (contradictions in testimony are not enough to support a claim of perjury; extrinsic evidence of falsity must be shown); *see generally Collins*, 202 Ill. 2d at 66 (a post-conviction petition must be supported by specific facts that establish the existence of a constitutional violation).

B. VIDEOS

Next, petitioner alleges that Detectives Weber and Barsch committed perjury when they testified that there was a video of petitioner watching the victim gambling. Petitioner's claim of perjury stands completely unsupported by any specific facts establishing the falsity of the detectives' testimony. Instead, as evidence of fabrication by the detectives, petitioner merely states that "no video was played showing Turner ever gambling at any time at the casino". However, petitioner's assertion is directly refuted by the record. At trial, the State introduced video clips depicting Turner gambling in the casino and petitioner nearby watching the victim. *Transcript of Proceedings* at 205-LL-238-LL (May 20, 2013). Accordingly, because petitioner's claim is directly refuted by the record, this claim fails.

Petitioner further alleges that the State committed perjury by "claim[ing] there was extensive video evidence of petitioner associated with co-defendant Aaron Bronson". Once again, with the above standard in mind, petitioner's claim fails. Petitioner's claim of perjury stands completely unsupported by any specific facts establishing the falsity of this testimony. Instead, as evidence of

fabrication by the detectives, petitioner merely states that "at trial, the State only presented a video clip of petitioner entering Bronson's vehicle, far from extensive video". Simply because a video of petitioner directly associating with Bronson was not played at trial does not mean such video does not exist. Because petitioner has failed to provide any extrinsic evidence establishing the falsity of the detectives' testimony, he has failed to state a claim for relief. *See Hilliard*, 109 Ill. App. 3d at 802 (contradictions in testimony are not enough to support a claim of perjury; extrinsic evidence of falsity must be shown); *see generally Collins*, 202 Ill. 2d at 66 (a post-conviction petition must be supported by specific facts that establish the existence of a constitutional violation).

C. ANGELA BAKER'S SIGNING OF THE CONSENT FORM

Petitioner claims that Detectives Weber and Barsch committed perjury when they testified that there were several officers present when Angela Baker signed the consent form and that Detective Barsch was on the first floor for fifteen minutes. Here, petitioner's claim of perjury stands completely unsupported by any specific facts establishing the falsity of this testimony. Instead, as evidence of fabrication by the detectives, petitioner points to the attached supplementary report. This report does not state that Detectives Weber and Barsch were the only officers present when Baker signed the consent form, nor does it state anything which would indicate that Detective Barsch was not on the first floor for fifteen minutes. Instead, the report merely states that Baker invited Detectives Weber and Dougherty into her apartment, that Detective Dougherty observed petitioner standing in a hallway and placed him into custody, and that "[r]eporting detectives spoke to Angela Baker.... and explained the

consent to search procedures to her. Angela Baker then signed a consent to search form." Accordingly, because petitioner has failed to provide any extrinsic evidence establishing the falsity of the detectives' testimony, he has failed to state a claim for relief. *See Hilliard*, 109 Ill, App. 3d at 802 (contradictions in testimony are not enough to support a claim of perjury; extrinsic evidence of falsity must be shown); *see generally Collins*, 202 Ill. 2d at 66 (a post-conviction petition must be supported by specific facts that establish the existence of a constitutional violation).

D. RECOVERY OF MONEY FROM THE MIDDLE BEDROOM

Next, petitioner alleges that Detective Weber committed perjury when he testified that he recovered money from the middle bedroom. Here, petitioner's claim of perjury stands unsupported by any specific facts establishing the falsity of this testimony. Instead, as evidence of fabrication by Detective Weber, petitioner merely states that Detective Weber's testimony was contradicted by the attached supplementary report. There is a substantial problem with drawing this inference. Just because Detective Weber's testimony was inconsistent with the police report, it does not necessarily follow that Detective Weber's testimony was false; instead, it is possible that the officer who authored the report had a different perception of what transpired, or that Officers Weber and Dougherty both recovered money from the middle bedroom. Accordingly, because petitioner has failed to provide any extrinsic evidence establishing the falsity of Detective Weber's testimony, he has failed to state a claim for relief *See Hilliard*, 109 Ill. App. 3d at 802 (contradictions in testimony are not enough to support a claim of perjury; extrinsic evidence of falsity must be shown); *see generally Collins*, 202 Ill. 2d at 66 (a post-

conviction petition must be supported by specific facts that establish the existence of a constitutional violation).

E. RUPERT EVANS' IDENTIFICATION OF PETITIONER

Petitioner alleges that the State committed perjury by stating that Rupert Evans identified petitioner as watching the victim win money at the casino. With the above standard in mind, petitioner's claim fails. Petitioner's claim of perjury stands completely unsupported by any specific facts establishing the falsity of this statement. As evidence of fabrication by the State, petitioner merely points to the fact that this information was not contained in the police reports. There is a substantial problem with drawing this inference. Just because this statement was not included in a police report, it does not necessarily follow that the statement was false; instead, it is possible the information was simply not included in the reports. Police reports are summaries and do not include every single statement made by every single witness. Because petitioner has failed to provide any extrinsic evidence establishing the falsity of this statement, he has failed to state a claim for relief. *See Hilliard*, 109 m. App. 3d at 802 (contradictions in testimony are not enough to support a claim of perjury extrinsic evidence of falsity must be shown); *see generally Collins*, 202 Ill. 2d at 66 (a post-conviction petition must be supported by specific facts that establish the existence of a constitutional violation).

F. REMAINING STATEMENTS BY PROSECUTORS

Finally, petitioner claims that the prosecutors committed perjury by telling the jury that: (1) the money recovered from 63rd and Champlain was connected to

Tumer's death, and (2) every 911 caller saw a person exit the passenger side of the SUV. These claims of perjury stand completely unsupported by any specific facts establishing the falsity of these statements. Because petitioner has failed to provide any extrinsic evidence establishing the falsity of these statements, he has failed to state a claim for relief. *See Hilliard*, 109 Ill. App. 3d at 802 (contradictions in testimony are not enough to support a claim of perjury; extrinsic evidence of falsity must be shown); *see generally Collins*, 202 Ill. 2d at 66 (a post-conviction petition must be supported by specific facts that establish the existence of a constitutional violation).

III. INEFFECTIVE ASSISTANCE OF TRIAL COUNSEL FOR FAILURE TO IMPEACH DETECTIVES' PERJURED STATEMENTS

Next, petitioner claims his trial counsel was ineffective for failing to impeach Detectives Weber and Barsch's perjured statements. For the reasons discussed in Section II, petitioner has failed to demonstrate that detectives Weber and Barsch committed perjury. Accordingly, because petitioner has failed to demonstrate that Detectives Weber and Barsch committed perjury, petitioner's claim that his trial counsel was ineffective for failing to impeach the detectives perjured statements must fail.

IV. TRIAL COURT ERRED IN ITS CREDIBILITY DETERMINATIONS

Petitioner next asserts that during the hearing on petitioner's motion to quash, the trial court erred by determining that witnesses Shawanna Chester and Angela Baker were not credible, and that Detectives Weber and Barsch were credible. Specifically, petitioner argues that Chester and Baker had no motive to lie, and

the detectives' testimony was "full of inconsistencies". Claims regarding witness credibility are essentially sufficiency of the evidence claims, which are inappropriate for post-conviction review. *Rogers*, 197 Ill. 2d at 221 (while the requirement of proof of guilt beyond a reasonable doubt is a matter of constitutional right, it is not the purpose of the Post-Conviction Hearing Act to re-determine guilt or innocence); *see also People* v. *Boyd*, 347 Ill. App. 3d 321, 335 (1st Dist. 2004). Accordingly, this claim fails as it is inappropriate for post-conviction review.

V. TRIAL COURT IMPROPERLY INFLUENCED THE STATE TO CHANGE ITS THEORY

Petitioner claims that during the arguments on petitioner's motion to quash, the trial court improperly influenced the State to change its theory. Specifically, petitioner contends that the State argued that police arrested petitioner, and at the end of the State's argument, "the court interrupted, and improperly implied that petitioner was being detained, when neither detective ever testified to any detainment, or any argument by the State, of detainment, until after the court introduced it into the motion" [sic].

ln this case, petitioner fails to demonstrate prejudice. Even if the trial court had suggested that police only detained, rather than arrested, petitioner during the pendency of the search, this would not have impacted the outcome of the hearing. The trial court noted in its ruling that even at the time petitioner was handcuffed prior to the execution of the search warrant, there was "a mountain of circumstantial evidence" which constituted probable cause to arrest petitioner. *Transcript of Proceedings* at HH-22 (May 16, 2013). The court further explained:

> While I agree that the State conceded that the arrest occurred at the moment where Mr. Grady was handcuffed and placed in the chair, and I also agree though after considering the evidence carefully that the circumstantial evidence was great enough under the totality of the circumstances to have justified an arrest at that time, but this Court is not obligated to follow the Detective's determination of when the arrest occurred or the State's determination of when the arrest occurred. I find an arrest would have been appropriate at that time based on the circumstantial evidence.

Id. at HH-19. Thus, the trial court explicitly found that there was probable cause to arrest petitioner at the point he was handcuffed, regardless of whether the State characterized this action as an arrest or detention during a search. Therefore, petitioner fails to demonstrate prejudice and this claim fails.

VI. TRIAL COURT ERRED IN DENYING PETITIONER'S MOTION TO QUASH

Petitioner next contends that the trial court erred in denying petitioner's motion to quash because police lacked probable cause to arrest him. The Fourth Amendment to the United States Constitution provides: "The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated." U.S. Const. amend. IV. Similarly, article I, section 6 of the Illinois Constitution provides: "The people shall have the right to be secure in their persons, houses, papers and other possessions against unreasonable searches, seizures, invasions of privacy or interceptions of communications by eavesdropping devices or other means." Ill. Const. art I, § 6. Probable cause to

arrest an individual exists when the facts known to an officer at the time of the arrest are sufficient to lead a reasonably cautious person to believe that the arrestee has committed a crime. *People v. Wear*, 229 Ill. 2d 545, 563 (2008). Here, prior to his arrest:

> The Defendant in this case was observed on video surveillance and identified in a photo array as having been near the victim and his friend at the time that the victim was playing at the Horseshoe Casino. He was also on his cell phone. He was observed leaving that location with the co-offender's when the co-offender's license plate was identified. At the scene of the crime was the Defendant's phone, which then the subscriber information sent the State back to the Champlain address where the Defendant was located. Now, when he was not at that first-floor address where the police received the search warrant and searched, they did a canvass, and they were looking to find out whether or not Mr. Grady had moved and where he had moved to. He happened to be there. They recognized him. They had enough probable cause to arrest.

Transcript of Proceedings at HH-20 - HH-21 (May 16, 2013). As the trial court noted, prior to arresting petitioner, detectives were in possession of a "mountain of circumstantial evidence" indicating that petitioner committed this offense. This evidence was sufficient to establish probable cause to arrest petitioner. Accordingly, petitioner's claim that the trial court erred in denying his motion to quash fails.

VII. TRIAL COURT ERRED IN DENYING PETITIONER'S MOTION TO BAR AARON BRONSON'S NEW STATEMENTS

Petitioner claims that the trial court erred in denying petitioner's motion to bar Aaron Bronson's new statements. Specifically, petitioner alleges that the State did not inform the defense until the trial was already underway that Bronson was going to materially deviate from his taped interrogations by stating that petitioner was the shooter. Petitioner asserts that this resulted in a trial by ambush.

Here, petitioner is mistaken – the deviations Bronson made from his videotaped statement involved merely: (1) who was driving the vehicle; and (2) petitioner discussing the gun with Bronson after the shooting. These deviations did not involve Bronson stating for the first time that petitioner was the shooter. The record indicates that the State learned that Bronson intended to make these deviations after the trial had already begun while they were preparing Bronson to testify, and disclosed the information to petitioner's counsel immediately. As the trial court accurately stated:

> ... [I]n the course of trial when you interview witnesses, they flip you all the time. Actually this flip helps you from this court's estimation and doesn't help you [sic]. In my opinion, this hurts the State. The fact that Aaron Bronson can't stick with one statement is your strongest argument. And I don't see how this is a trial by ambush. I see what this prosecutor is doing is actually following every single *Brady* requirement in a timely fashion.

Transcript of Proceedings at 27-LL (May 20, 2013). A witness changing his story is not within a prosecutor's control, nor is it something a prosecutor can predict. Here,

the State fully complied with *Brady's* ongoing disclosure requirement by disclosing Bronson's new statements to petitioner's counsel as soon as the State became aware of them. For these reasons, petitioner's claim that the trial court erred by denying petitioner's motion to bar Bronson's new statements fails.

VIII. THE STATE IMPROPERLY VOUCHED FOR AARON BRONSON'S CREDIBILITY

Petitioner next alleges that the State improperly vouched for Aaron Bronson's credibility. Specifically, petitioner alleges that: (1) "The State argued to the jury that it didn't like Bronson, and there's no surprise Bronson is who he is, but they have to believe him"; (2) "The State also argued that part of Bronson's plea agreement is he has to tell the truth or he could be charged with perjury"; and (3) "The State then argued Bronson had no motive to lie, and if the jury believed Bronson didn't want to receive any more time, then they knew he wasn't lying".

Prosecutors have wide latitude in making their closing arguments. They are allowed to comment on the evidence and reasonable inferences from the evidence, including a defendant's credibility or the credibility of the defense's theory of the case. However, prosecutors are not permitted to vouch for the credibility of a government witness, nor are they permitted to use the credibility of the state's attorney's office to bolster a witness's testimony. *People v, Williams*, 2015 IL App (1st) 122745, ¶ 12. In this case, the prosecutor's arguments that the jury "had to believe [Bronson]", that "part of Bronson's plea agreement is he has to tell the truth or he could be charged with perjury", and that "Bronson had no motive to lie" did not amount to the prosecutor personally vouching for Bronson. Rather, these arguments were merely persuasive statements regarding the evidence and reasonable inferences which

can be drawn from the evidence regarding a witness's credibility. Accordingly, this claim fails.

IX. ACCOUNTABILITY

Petitioner contends that the State erred during closing arguments by telling the jury that it may also find petitioner guilty under a theory of accountability, and that the trial court erred by allowing an accountability instruction. Specifically, petitioner claims that this was improper because the State's theory of the case throughout the trial was that petitioner was the shooter and that "the sudden change of theory was misleading to petitioner's jury". Contrary to petitioner's contention, the State did not have a "sudden change of theory" that misled the jury. The State's theory throughout the entire trial was that petitioner was the shooter. The State did not deviate from this theory during closing arguments, nor did the State argue at any point that petitioner was not the shooter. In fact, during closing arguments, the prosecutor clearly stated: "Aaron is not the shooter in this case. He is not. The only – he might be tall. He might be thin, but the only person there that night, the only person dressed in all dark clothes, the only person in black was the defendant. The defendant is the one, the defendant." *Transcript of Proceedings* at OO-282 (May 23, 2013). Accordingly, because it is directly refuted by the record, petitioner's claim fails.

X. TRIAL COURT WAS BIASED AGAINST PETITIONER AND PETITIONER'S COUNSEL

Petitioner alleges that the trial court was biased against petitioner and his counsel. Specifically, petitioner contends that: (1) instead of immediately issuing a ruling following the hearing on petitioner's motion to suppress,

the trial court "issued a two day continuance without either attorney requesting it"; (2) the trial court became "irritated and angry" at petitioner's counsel for requesting continuances and interrupted counsel multiple times; (3) the trial court overruled petitioner's counsel's objections, but sustained multiple objections from the State; and (4) the trial court "chose to sustain its own objections, without the State objecting".

First, petitioner's contention that the trial court was biased against petitioner and his counsel because the trial court "issued a two day continuance without either attorney requesting it" prior to ruling on petitioner's motion to suppress fails. The trial court issued a continuance following arguments on the motion to suppress to allow both parties to submit additional case law to the court. Additionally, there is no rule that prohibits a trial court from continuing a case for ruling on a motion. Moreover, petitioner fails to demonstrate how he was prejudiced by this continuance. For these reasons, this claim fails.

Next, petitioner's claim that the trial court became "irritated and angry" at petitioner's counsel for requesting continuances and interrupted counsel multiple times fails. Petitioner fails to demonstrate that the trial court was in fact "irritated and angry" with petitioner's counsel. However, even if the trial court was irritated with and interrupted petitioner's counsel, petitioner fails to demonstrate how he was prejudiced as a result. Accordingly, this claim fails.

Next, petitioner asserts that the trial court was biased against petitioner because it overruled petitioner's counsel's objections, but sustained those of the State. Petitioner points to several of his counsel's objections that he argues were erroneously overruled, but petitioner fails

to specify why he believes the objections should have been sustained. Petitioner also fails to specify why he believes the State's objections should have been overruled. Non-factual and non-specific assertions which merely amount to conclusory statements are insufficient to require a hearing under the Act. *People v. Brown*, 236 Ill. 2d 175, 205 (2010). In this case, because petitioner's allegations are merely unsupported conclusory statements, petitioner fails to make a substantial showing of a constitutional violation.

Finally, petitioner contends that the trial court was biased against petitioner because the trial court "chose to sustain its own objections, without the State objecting". Petitioner argues that this "affected the jury's outlook on petitioner and his counsel, causing them to stop being impartial and become suspicious towards them". Petitioner claims that the court sustained its own objections" during the examinations of Anthony McGee, Adam Rose, Henry Barsch, Aaron Bronson, and petitioner. However, petitioner does not point to the specific comments which he believes constitute the court improperly "sustaining its own objections". As stated above, non-factual and non-specific assertions which merely amount to conclusory statements are insufficient to require a hearing under the Act. *Id.* In this case, because petitioner's allegations are merely unsupported conclusory statements, petitioner fails to make a substantial showing of a constitutional violation.

XI. THE STATE FAILED TO PROVE PETITIONER GUILTY BEYOND A REASONABLE DOUBT

Petitioner claims that the State failed to prove petitioner guilty beyond a reasonable doubt. Claims of insufficiency of the evidence are inappropriate for post-

conviction review. *Rogers*, 197 Ill. 2d at 221 (while the requirement of proof of guilt beyond a reasonable doubt is a matter of constitutional right, it is not the purpose of the Post-Conviction Hearing Act to re-determine guilt or innocence); *see also Boyd*, 347 111. App. 3d at 335. Accordingly, petitioner's claim is inappropriate for post-conviction review and therefore fails.

XII. INEFFECTIVE ASSISTANCE OF APPELLATE COUNSEL

Petitioner claims his appellate counsel rendered ineffective assistance by fairing to raise the above issues on direct appeal. It is axiomatic that a criminal petitioner is guaranteed the effective assistance of counsel on appeal. *Evitts v. Lucey*, 469 U.S. 387, 396-97 (1985). However, effective assistance in a constitutional sense means competent, not perfect, representation. *People v. Easley*, 192 Ill. 2d 307, 344 (2000). In assessing claims of ineffective assistance of appellate counsel, the court follows the two-pronged test of *Strickland v. Washington*. *People v. Smith*, 326 Ill. App. 3d 831, 854 (1st Dist. 2001). To succeed on a claim of ineffective assistance of appellate counsel, petitioner must show that the failure to raise a particular issue was objectively unreasonable and that his appeal was prejudiced by the omission. *People v. Williams*, 209 Ill. 2d 227, 243 (2004). "Appellate counsel is not obligated to brief every conceivable issue on appeal, and it is not incompetence of counsel to refrain from raising issues which, in his or her judgment, are without merit, unless counsel's appraisal of the merits is patently wrong." *Easley*, 192 Ill. 2d at 329. Thus, petitioner has not suffered prejudice from appellate counsel's decision not to raise certain issues on appeal unless such issues were meritorious. *Id.* In the instant matter, as the above discussion indicates, the issues raised in this petition are

not meritorious. Petitioner has therefore not suffered prejudice from appellate counsel's decision not to raise these issues on appeal, and counsel's assistance was therefore not ineffective. Accordingly this claim is without merit and must fail.

CONCLUSION

The court finds that the issues raised and presented by petitioner are frivolous and patently without merit. Accordingly, the petition for post-conviction relief is hereby dismissed. Petitioner's requests for leave to proceed *in forma pauperis*, for appointment of counsel, and for free transcripts, are also denied.

ENTERED:

_____

Honorable Erica L. Reddick
No. 2038
Circuit Court of Cook County
Criminal Division

DATED: _____

APPENDIX E

2015 IL App (1st) 132160-U

SIXTH DIVISION
October 16, 2015

No. 1-13-2160

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, Plaintiff-Appellee	)	Appeal from the Circuit Court of Cook County.
v.	)	No. 11 CR 169
ARTHUR GRADY, Defendant-Appellant.	)	Honorable Rosemary Grant Higgins, Judge Presiding

JUSTICE HALL delivered the judgment of the court. Presiding Justice ROCHFORD and Justice DELORT concurred in the judgment.

O R D E R

¶1 *Held*: The trial court did not abuse its discretion in imposing a sentence of 60 years' imprisonment for first degree murder.

¶2 Following a jury trial, defendant Arthur Grady was convicted of first degree murder and sentenced to 60 years in prison. On appeal, defendant contends that his sentence is excessive and that the mittimus should be corrected to reflect 1,600 days of presentencing custody credit. For the reasons that follow, we affirm and order correction of the mittimus.

¶3 Defendant's conviction arose from the January 30, 2009 shooting death of Ralph Turner, Jr. Defendant was charged along with Aaron Bronson, who pleaded guilty and testified against defendant. The State's theory of the case was that defendant and Bronson planned to rob the victim, whom they had followed out of a casino, but that when the victim resisted, defendant shot him. The medical examiner who conducted the autopsy of the victim testified that the cause of death was one gunshot wound to the chest and one gunshot wound to the thigh.

¶4 At trial, the State presented evidence that on the night in question, the victim and a group of his friends went to the Horseshoe Casino in Hammond, Indiana. At the end of the evening, one of the men drove the victim and one of his friends to the victim's house in Chicago and dropped them off. The victim's friend testified that as he walked in the street toward his car, an SUV stopped in front of the victim's house and a man in a dark hoodie got

out of the passenger seat. The man heard two gunshots before he ran away. A woman who lived down the block from the victim testified that she heard two loud noises just before 4 a.m. She then looked out her window and saw an SUV driving in reverse down the street.

¶5 A Chicago police officer testified that when he was on his way to the scene, he saw a person matching the general description given by the dispatcher. The officer stopped the man, identified in court as defendant, and conducted a protective pat-down search, but found no weapons. The officer found no investigative alerts or active warrants for defendant in the police computer system, so he released defendant.

¶6 Using information gleaned from a cell phone recovered at the scene of the shooting, video surveillance footage from the casino, and a photo array identification made by one of the victim's friends, a Chicago police detective identified defendant as a suspect in the shooting and obtained a search warrant for his address. When the warrant was executed the day after the shooting, the police recovered two guns. A firearm expert determined that the fired bullet and bullet jacket found inside the victim's body were fired from one of the guns. Defendant was arrested at his residence, while Bronson was arrested nine months later in Indiana.

¶7 Aaron Bronson testified that he pleaded guilty to first degree murder in the instant case in exchange for a sentence of 24 years in prison. Bronson testified that on the night in question, he and defendant went to the Horseshoe Casino to gamble. At some point, defendant told Bronson that he had lost all his money, but that he saw a group of men who had about $30,000 and thought they should rob them. Bronson agreed to the plan. Later,

defendant approached Bronson, told him the group was leaving, and directed Bronson to get his truck. Bronson testified that he retrieved his truck and then drove around until defendant called him to say it was time to pick him up. Bronson drove up to the valet and saw the group of men get into a Mercedes. After defendant got into Bronson's truck, Bronson followed the Mercedes to Chicago.

¶8 Bronson testified that the Mercedes stopped briefly and two of its passengers got out. Defendant jumped out of the truck with a gun and ran up to the victim. The victim punched defendant, who fell down toward the ground. Bronson put his truck in reverse and started to drive away. As he did so, he saw the second of the Mercedes' passengers running across the median and heard two or three gunshots. Bronson also saw defendant "hovered over" a man lying on the ground. Bronson did not wait for defendant, but fled to defendant's apartment. Defendant returned several hours later, reported that "he ain't get no money, and he got pulled over that night by the police and they let him go, and he lost his phone." Defendant also reported that he threw the gun, but told Bronson that he was going to go back to get it because it might have his fingerprints on it. Defendant left, and when he came back, Bronson saw him with the gun. Bronson left for Indiana the next day.

¶9 Defendant testified that he and Bronson went their separate ways at the casino. Defendant walked around the casino to pass the time until Bronson was ready to leave. Whenever defendant heard people clapping and cheering, he would walk up to them to see what was going on. Among the tables he walked up to was the victim's. Defendant denied talking with Bronson about robbing anyone.

¶10 Eventually, defendant and Bronson decided to leave. Bronson got his truck and picked up defendant at the valet area. Defendant testified that he plugged his cell phone into the charger and went to sleep. When the truck came to a sudden stop, defendant woke up. Defendant looked out the window and saw two men walking on the sidewalk in opposite directions. Bronson got out of the truck, approached one of the men on the sidewalk, and engaged him in conversation. The man punched Bronson and both men fell to the ground. Defendant saw the second man turn back and head toward the fight. Defendant got out of the truck, intending to stop the fight, but when he heard two gunshots, he got back in the truck, put it in reverse, and drove off.

¶11 About two blocks away, defendant parked the truck. He could not find his cell phone, so he walked to a nearby gas station. While he was walking, he was stopped by the police, but then let go. Eventually, defendant went home, where the police arrested him the next day. According to defendant, the gun recovered from his apartment was Bronson's.

¶12 In rebuttal, the State introduced a certified copy of conviction for defendant's prior convictions of aggravated battery to a police officer and resisting / obstructing a police officer, causing injury.

¶13 The jury found defendant guilty of first degree murder, but also found that the State had not proven the allegation that defendant personally discharged a firearm that proximately caused death to another person. The trial court denied defendant's motion for a new trial.

¶14 At the sentencing hearing, the State presented certified copies of convictions reflecting that defendant

had been convicted of possession of a controlled substance, aggravated battery to a police officer, and resisting and obstructing a police officer. In mitigation, defendant's grandfather testified that defendant was a smart man who was close to his two daughters. Defense counsel noted that defendant was working on an associate's degree at the time he was arrested, that he had worked in landscaping and painting, and had worked on housing development with the Woodlawn Organization. In allocution, defendant stated that he was sorry for the victim's family's loss, but maintained that he had nothing to do with Bronson's crime and stated that he should not have been held accountable for Bronson's actions.

¶15 The trial court indicated that it had listened to the testimony of all the witnesses and had reviewed the presentence investigation report. The court stated that defendant had excellent role models in his life, finished high school, and had continued with his education. The court also noted defendant's prior convictions and lack of remorse, stated that it accepted the scenario presented by Bronson, and observed that it was defendant who was "stalking" the victim and his friends at the casino. The trial court stated that it found defendant had very little, if any, rehabilitative potential because he had "all of those opportunities" but made more than one bad mistake. As such, the trial court sentenced defendant to 60 years in prison.

¶16 The trial court subsequently denied defendant's motion to reconsider sentence, reiterating that defendant had many opportunities in his life, but did not make the "right decisions," and that therefore, it found defendant had very little rehabilitative potential, if any.

¶17 On appeal, defendant contends that his sentence is excessive. He argues that the trial court abused its discretion in imposing what is essentially a life sentence where the jury found that he was not the shooter, but rather, was only accountable for his codefendant's actions; his criminal history was not extensive; his education and work history indicates that he has rehabilitative potential; and his codefendant received a 24-year sentence. Defendant further argues that the circumstances of the offense do not warrant a maximum sentence, because while he and Bronson planned to rob the victim, the murder was not premeditated.

¶18 Sentencing decisions are entitled to great deference on appeal because the trial court is in a superior position to fashion an appropriate sentence based on firsthand consideration of relevant sentencing factors, including the defendant's credibility, demeanor, moral character, mentality, social environment, habits, and age. *People v. Fern*, 189 Ill. 2d 48, 53 (1999). We will not disturb a sentencing determination absent an abuse of discretion. *People v. Hauschild*, 226 Ill. 2d 63, 90 (2007). Sentences within the permissible statutory range may be deemed the result of an abuse of discretion only where they are "greatly at variance with the spirit and purpose of the law, or manifestly disproportionate to the nature of the offense." *People v. Stacey*, 193 Ill. 2d 203, 210 (2000).

¶19 Here, the record indicates that the trial court was well aware of the facts of the case, including the jury's finding that the State had not proved defendant personally discharged the firearm that caused the victim's death, as well as the testimonies of both defendant and codefendant that while the robbery was planned, the shooting was not. The trial court also was aware of the mitigating factors defendant has identified on appeal. Not only was the

information regarding defendant's criminal background, employment history, and education included in the presentence investigation report that was considered by the trial court, but it was also noted by the attorneys at the sentencing hearing. Where mitigating evidence has been presented, it is presumed that the trial court considered it. *People v. Sven*, 365 Ill. App. 3d 226, 242 (2006). As for defendant's argument that his sentence is disproportionate to Bronson's, it is well established that a sentence entered after a guilty plea does not provide a valid basis of comparison to a sentence imposed after a trial. *People v. Nutall*, 312 Ill. App. 3d 620, 635 (2000).

¶20 The trial court sentenced defendant to 60 years' imprisonment, a term within the permissible statutory range for first degree murder of 20 to 60 years. 730 ILCS 5/5-4.5-20(a)(1) (West 2010). The record indicates that the trial court properly considered the evidence in aggravation and mitigation. Given the facts of the case, the interests of society, and the trial court's consideration of relevant aggravating and mitigating factors, we cannot find that defendant's sentence is "greatly at variance with the spirit and purpose of the law, or manifestly disproportionate to the nature of the offense." *Stacey*, 193 Ill. 2d at 210. Accordingly, we find no abuse of discretion in the length of defendant's sentence.

¶21 Defendant's second contention on appeal is that the mittimus should be corrected to reflect 1,600 days of presentencing custody credit. The State concedes the issue. Accordingly, we order the clerk of the circuit court to correct the mittimus to reflect 1,600 days of presentence custody credit.

¶22 For the reasons explained above, we affirm the judgment of the circuit court and order correction of the mittimus.

¶23 Affirmed; mittimus corrected.

APPENDIX F

UNITED STATES COURT OF APPEALS
FOR THE SEVENTH CIRCUIT CHICAGO, ILLINOIS 60604

August 18, 2023

BEFORE

DIANE S. SYKES, *Chief Judge*

ILANA DIAMOND ROVNER, *Circuit Judge*

DIANE P. WOOD, *Circuit Judge*

No. 21-3162

ARTHUR GRADY,
Petitioner-Appellant,
v.
CHARLES TRUITT,
Respondent-Appellee.

Appeal from the United States District Court for the Northern District of Illinois, Eastern Division.

No. 20-cv-02530

Mary M. Rowland, *Judge*.

O R D E R

On consideration of the petition for rehearing filed by Petitioner-Appellant on August 3, 2023, all members of the original panel have voted to deny the petition for panel rehearing.

Accordingly, the petition for rehearing is hereby DENIED.

APPENDIX G

UNITED STATES COURT OF APPEALS FOR THE SEVENTH CIRCUIT

Everett McKinley Dirksen
United States Courthouse
Room 2722 - 219 S. Dearborn Stree
Chicago, Illinois 60604

Office of the Clerk
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FINAL JUDGMENT

July 20, 2023

Before
DIANE S. SYKES, *Chief Judge*
ILANA DIAMOND ROVNER, *Circuit Judge*
DIANE P. WOOD, *Circuit Judge*

No. 21-3162	ARTHUR GRADY, Petitioner - Appellant v. CHARLES TRUITT, Respondent - Appellee
Originating Case Information:	
District Court No: 1:20-cv-02530 Northern District of Illinois, Eastern Division District Judge Mary M. Rowland	

We **AFFIRM** the judgment of the district court denying Grady's petition for a writ of habeas corpus, with costs, in accordance with the decision of this court entered on this date.

Clerk of Court

form name: **c7_FinalJudgment** (form ID: **132**)