

No 26-5036

FILED

MAY - 7 2026

OFFICE OF THE CLERK
SUPREME COURT, U.S.

IN THE
SUPREME COURT OF THE UNITED STATES

Phillip L. Horrell - Petitioner

vs.

Tyrone Baker, Warden, Hill C.C. - Respondent

ON PETITION FOR A WRIT OF CERTIORARI TO
THE SEVENTH CIRCUIT COURT OF APPEALS

APPENDIX OF PETITIONER

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pro se litigant

Volume 1

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APPENDIX A

United States Court of Appeals

For the Seventh Circuit
Chicago, Illinois 60604

Submitted April 9, 2026

Decided April 17, 2026

Before

AMY J. ST. EVE, *Circuit Judge*

JOSHUA P. KOLAR, *Circuit Judge*

No. 25-2685

PHILLIP L. HORRELL,
Petitioner-Appellant,

Appeal from the United States District
Court for the Central District of Illinois.

v.

No. 2:23-cv-02208-CSB

TYRONE BAKER,
Respondent-Appellee.

Colin S. Bruce,
Chief Judge.

ORDER

Phillip Horrell has filed a notice of appeal from the denial of his petition under 28 U.S.C. § 2254 and an application for a certificate of appealability. This court has reviewed the final order of the district court and the record on appeal. We find no substantial showing of the denial of a constitutional right. *See* 28 U.S.C. § 2253(c)(2).

Accordingly, the request for a certificate of appealability is **DENIED**. Horrell's motions to proceed in forma pauperis, to supplement his motion to proceed in forma pauperis, and for appointment of counsel are **DENIED**.

APPENDIX B

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF ILLINOIS
URBANA DIVISION

PHILLIP LEE HORRELL,

Petitioner,

v.

TYRONE BAKER,

Respondent.

Case No. 2:23-cv-2208-CSB

ORDER

Before the Court is Petitioner Phillip Lee Horrell's Petition for Writ of Habeas Corpus pursuant to 28 U.S.C. § 2254 (#1), Motion for Summary Judgment (#24), Motion for Evidentiary Hearing (#29), Motion to Expand the Record (#31), and Motion for Sanctions (#32). Horrell's Motion to Expand the Record (#31) is GRANTED to the extent that the Court reviewed and considered the evidence Horrell attached to the motion. For the reasons below, the Court DENIES Horrell's Petition (#1) and DECLINES to issue a certificate of appealability. Horrell's Motion for Summary Judgment (#24) and Motion for Evidentiary Hearing (#29) are DENIED as moot in light of the Court's ruling on his Petition. Horrell's Motion for Sanctions (#32) is DENIED.

I. BACKGROUND¹

On October 12, 2012, while committing a residential burglary, Horrell fatally stabbed James Goldenstein and stabbed Betty Goldenstein. *People v. Horrell*, 2022 IL App (3d) 200417-

¹ Unless otherwise noted, the facts are taken from the undisputed facts in Respondent's Response (#8), which are consistent with the official records from Petitioner's state court proceedings, which Respondent attached to the response (#9). See 28 U.S.C. § 2248 ("The allegations of a return to the writ of habeas corpus or of an answer to an order to show cause in a habeas corpus proceeding, if not traversed, shall be accepted as true except to the extent that the judge finds from the evidence that they are not true."). The factual determinations of the state court are presumed to be correct, unless a petitioner rebuts the presumption by clear and convincing evidence. 28 U.S.C. § 2254(e)(1).

U, ¶ 4. On November 1, 2013, Horrell pled guilty but mentally insane (“GBMI”) to felony murder, in violation of 720 ILCS 5/9-1(a)(3), and attempted first degree murder, in violation of 720 ILCS 5/8-4(a), 9-1(a)(1). *Id.* ¶ 8. He was later sentenced to life for the murder and 30 years in prison for the attempted murder.

A. Plea Proceedings

Prior to pleading guilty, Horrell’s counsel consulted with multiple mental health experts. One psychologist, Dr. Tracy Rogers, wrote a report finding Horrell appeared to have bipolar disorder and an addiction to crack cocaine. *Horrell*, 2022 IL App (3d) 200417-U, ¶ 5. A second psychologist, Dr. James Simone, diagnosed Horrell with anxiety disorder, polysubstance dependence, malingering, and antisocial personality disorder. Both found him fit to stand trial. *Id.* ¶ 6. As discussed at later post-plea proceedings, Horrell’s counsel testified that they conferred with those experts, as well as Dr. Goldstein and Dr. Orest Wasyliv, and concluded Horrell did not have a viable insanity defense.

Accordingly, counsel advised Horrell to plead GBMI to first degree murder and attempted murder. The State dropped the remaining charges in exchange, but did not promise to make any specific sentencing recommendation. As Respondent explains, under Illinois law, a defendant who pleads GBMI is subject to the same sentencing range as someone who simply pleads “guilty,” but a GBMI plea imposes certain requirements on the prison, including that prison officials regularly evaluate the defendant’s mental health and provide necessary treatment. *See* 730 ILCS 5/5-2-6. And while it is true that a GBMI plea “does not guarantee treatment,” which is only received if the Illinois department of Corrections deems such treatment appropriate, the GBMI plea does “guarantee[] periodic examinations.” *People v. Manning*, 227 Ill. 2d 403, 414 (2008).

At the plea hearing, the circuit court asked Horrell to explain what he did to the Goldensteins. Horrell said:

I went to the Goldstein house knowing that they had a pretty large amount of jewelry in a dresser[.] And I had a knife on me—not to kill, but to cut a screen and commit entry into somebody’s house that wasn’t home[.]. And I had been smoking crack all night long[.] And I spend, probably, 7-, \$800 on crack cocaine[.] And I was off my medication[.] So I was really out there, you know, and my mind wasn’t right[.] And I pushed the doorbell [a]nd Mr. Goldstein answered the door[.] And I asked her if I can use her phone, that my truck had a problem[.] She said sure [a]nd allowed me to use her phone[.] And I gave it back to her [a]nd when I did, I just stepped inside the house[.] And I don’t know what really prompted me to start swinging the knife around [b]ut I did[.] I pulled out the knife out of my pocket [a]nd I stabbed both of them many times and killed Mr. Goldstein.

(#9-5 at 35–37). James and Betty were 81 years old at the time and the parties agreed that James died due to multiple stab wounds. Betty survived, but suffered numerous stab wounds, a lacerated neck, and a broken eye socket. The circuit court accepted Horrell’s GBMI plea. Later, after a sentencing hearing, the court sentenced Horrell to life in prison for the murder of James and a consecutive 30-year sentence for the attempted murder of Betty.

B. Post-Plea and Appeal Proceedings

Horrell appealed, and the Illinois Appellate court remanded for a new post-plea proceedings so the circuit court could comply with certain state procedural rules. *Id.* ¶ 12.

While on remand, Horrell (represented by new counsel) moved to withdraw his plea for several reasons, including that (1) he pleaded GBMI because he had incorrectly believed “that he was found sane”; and (2) his prior counsel was ineffective for not pursuing an insanity defense. *Id.*

¶ 14. The circuit court held a hearing on that motion in 2020. *Id.* ¶ 15.

Horrell testified at the hearing that he was examined by mental health experts before his plea and his attorneys told him before he pleaded GBMI that he did not have a viable insanity

defense. Horrell did not call anyone at the hearing to testify that he was insane at the time of the attack or that opined whether he may have had a viable insanity defense.

The State called several witnesses in rebuttal, beginning with Horrell's plea counsel Lawrence Beaumont. Beaumont testified he and Robert Regas represented Horrell during the plea proceedings. Beaumont testified that given the strong evidence of Horrell's guilt, it was important to investigate whether Horrell had a viable insanity defense. Accordingly, Beaumont testified that he moved the state court to appoint The Isaac Ray Forensic Group to examine Horrell for competency and sanity. Beaumont testified he had worked with that group and person who runs it—Dr. Diana Goldstein—for many years and they are “considered top people in the country.” He talked to Dr. Goldstein and her colleagues “throughout the process” because he “wanted to know if we had a viable insanity defense.” Horrell went to a two-day mental health examination with The Isaac Ray Forensic Group, after which Dr. Goldstein told Beaumont her opinion that Horrell was competent and “she didn't think [Horrell] qualified for” an insanity defense.

Beaumont said he then sought a second opinion on Horrell's sanity from Dr. Wasyliv, another psychologist. According to Beaumont, after Dr. Wasyliv reviewed Horrell's records, he spoke with Beaumont on the phone and told him he “agreed with [Dr. Goldstein] that there was not a viable insanity defense.” Beaumont had “[i]nitially . . . intended to examine [Horrell] for sanity.” (#9-7 at 60–61). However, after the discussions with the experts and receiving two opinions that there was no insanity defense, he and his co-counsel determined no insanity defense was viable. *Id.* Beaumont testified that he discussed with co-counsel and Horrell and determined the best strategy was to plead guilty, accept responsibility, present mitigating evidence, and thereby attempt to get a lesser sentence.

Robert Regas, Beaumont's co-counsel, also testified that he and Beaumont considered the possibility of an insanity defense when they began representing Horrell. However, after speaking with Dr. Goldstein and Dr. Wasyliw, they concluded it would not be a viable defense. Regas recalled discussing the matter with Horrell and agreeing that the best strategy under the circumstances was to plead GBMI.

Next, the psychologists who were involved testified. Dr. James Simone (who had been appointed as the State's expert during pre-trial proceedings) testified that he had examined Horrell before he pleaded GBMI and determined he was competent to stand trial. Dr. Simone also concluded that Horrell was exaggerating his mental illness symptoms.

Dr. Goldstein of The Isaac Ray Forensic Group testified that she and Dr. Tracy Rogers examined Horrell over two-days before he pled GBMI. Dr. Goldstein determined that during the examination Horrell intentionally tried to perform poorly. Based on the examination, Dr. Goldstein and Dr. Rodgers told Horrell's counsel they "did not feel that the criteria were met for legal insanity," and, therefore, they "did not feel that [they] could write a separate report supporting [an insanity defense] [because] the elements were not supported based on any kind of mental health disorder." (#9-7 at 97). Dr. Goldstein said in some cases "there are things that happen in proximity to the alleged offense itself that demonstrate very clearly at least in our opinion that this individual understood the illegality of their conduct," and that she believed this was such a case based on the investigative reports. *Id.* at 114-15. She also said Beaumont asked for "the names of some other colleagues" so he could get a second opinion. *Id.* at 97.

Dr. Rodgers² testified that she examined Horrell before his plea and concluded Horrell was bipolar, but competent to stand trial. (#9-7 at 177). She conducted “a comprehensive evaluation,” which is done “so that if [they are] asked to answer additional questions [they] wouldn’t have to do a second evaluation.” *Id.* at 177–78. She testified that she spoke with defense counsel and said she could not help with the sanity aspect of the case. She came to this conclusion based on “the totality of information,” which included discussing with Horrell what he could remember about the day the events took place. *Id.* at 178–79. And, while in other cases she may need additional information to give an opinion on sanity, she did not need additional information in this case. *Id.* at 179. She further testified that while she did not address sanity in her reports, she would have performed the same tests on Horrell if she had been asked for an opinion on sanity.

Dr. Wasyliw testified that he was retired and he had “no personal memory of having talked with . . . Beaumont in 2013 or having written a report. [He] just kn[e]w that [he] did write the report because [he] found it in [his] files.” (#9-7 at 140, 145).

Following the hearing, the circuit court denied Horrell’s motion to withdraw his GBMI plea. Petitioner appealed through counsel, arguing (1) his sentence was void under state law; (2) his plea was not voluntary or intelligent because he did not know he had a basis to raise an insanity defense; (3) his counsel was ineffective for failing to raise an insanity defense; and (4) he was not afforded his “due process rights” under *Ake v. Oklahoma*, 470 U.S. 68, 74 (1985). The Illinois Appellate Court affirmed, finding Horrell’s claims rested on the premise that he had a valid insanity defense, but he was “unable to point to a doctor who concluded that he had a

² At the time of the hearing on the motion to withdraw the plea in 2020, Dr. Rodgers had changed her last name to Tilton. (#9-7 at 169). Other than the transcript of these proceedings, the state court records refers to her as Dr. Rodgers, so, for consistency, the Court will as well.

viable insanity defense” and “also cannot point to specific conduct that necessarily manifests insanity.” *Id.* ¶¶ 32-33, 37. Rather, as Dr. Wasyliv’s letter noted, the evidence (including the planning of his crimes) showed Horrell was sane at the time of his offenses. *Id.*

Horrell also exhausted the claims from his appeal by raising them in a petition for leave to appeal (PLA) to the Illinois Supreme Court. The Illinois Supreme Court denied the PLA in March 2023. *People v. Horrell*, 210 N.E.3d 794 (Ill. 2023) (Table).

C. Postconviction Proceedings

While his motion to withdraw proceedings were pending, Horrell also filed a *pro se* petition for relief from judgment, alleging his sentence was void. The circuit court dismissed that petition. Horrell then filed a *pro se* postconviction petition, alleging he was legally innocent because his parents thought he was insane, which was also dismissed by the circuit court. While Horrell appealed both of those rulings, Horrell’s appointed appellate counsel moved to withdraw because she found no issue of arguable merit. The Illinois appellate court granted leave to withdraw and affirmed the dismissal of both petitions. The Illinois Supreme Court later denied Horrell’s request for leave to file a late PLA.

D. Federal Petition for Writ of Habeas Corpus

Horrell filed this Petition for Writ of Habeas Corpus pursuant to 28 U.S.C. § 2254 (#1) in September 2023. He raises three claims for relief:

- (1) His due process and Fourteenth Amendment rights under *Ake v. Oklahoma*, 470 U.S. 68 (1985), were violated (#1 at 5–12);
- (2) His GBMI plea did not comport with due process or the Fourteenth amendment due to the false admonishments and because no sanity exam was conducted prior to his plea and his plea was involuntary and unintelligent (#1 at 1–20); and

(3) He received ineffective assistance of counsel when counsel failed to inform Horrell of his rights under *Ake* (#1 at 22).

Respondent filed a response in opposition (#8), along with a copy of the relevant state court record (#9). Horrell filed his reply brief (#16), along with additional supplemental state court records (#10, 14, 18), which the Court has also reviewed. Additionally, Horrell has filed a Motion for Summary Judgment (#24), Motion for Evidentiary Hearing (#29), Motion to Expand the Record (#31), and Motion for Sanctions (#32).

II. DISCUSSION

A. § 2254 Petition

Federal courts can grant writs of habeas corpus “only on the ground that he is in custody in violation of the Constitution or laws or treaties of the United States.” 28 U.S.C. § 2254(a). Where a state court has adjudicated a petitioner’s claims on the merits, pursuant to § 2254(d), “[a] federal court may grant a federal petition for habeas corpus only if the state court’s ruling on the federal constitutional question ‘was contrary to, or involved an unreasonable application of, clearly established Federal law, as determined by the Supreme Court,’ or ‘was based on an unreasonable determination of the facts in light of the evidence presented in the State court proceeding.’” *Snow v. Pfister*, 880 F.3d 857, 863–64 (7th Cir. 2018) (quoting 28 U.S.C. § 2254(d)). A state court’s decision is “contrary to” clearly established federal law “if the state court ‘applie[d] a rule different from the governing law set forth’ in Supreme Court decisions or decided a case differently than the Supreme Court ‘on a set of materially indistinguishable facts.’” *Corral v. Foster*, 4 F.4th 576, 582 (7th Cir. 2021) (quoting *Bell v. Cone*, 535 U.S. 685, 694 (2002)). A state court decision is an “unreasonable application of” clearly established federal law if the state court “identifies the correct governing legal rule from [Supreme Court]

cases but unreasonably applies it to the facts of the particular state prisoner's case." *Coleman v. Hardy*, 690 F.3d 811, 814 (7th Cir. 2012) (quoting *Williams v. Taylor*, 529 U.S. 362, 407 (2000)). This Court's review is limited to the record that was before the state court.

1. Disputed State Court Findings

As a threshold matter, Horrell appears to dispute the state court's finding that the Wasyliw letter was written by Dr. Wasyliw. Horrell's belief here and in state court is that the letter was a fraud. *See, e.g.*, #1 at 18–19, #31 at 30, 43, 51, 52, 84. Factual issues and credibility finding of state courts are presumed correct absent clear and convincing evidence to the contrary. 28 U.S.C. § 2254(e)(1). At the hearing on his motion to withdraw guilty plea, Dr. Wasyliw testified that he found his report on Horrell on his computer, but he did not remember having written it and had no memory of the case. (#9-7 at 145–46). The parties also stipulated that Dr. Wasyliw never examined Horrell. *Id.* at 11. The circuit court found that the evidence showed that Dr. Wasyliw was "called in to review records at the request of the defense counsel in a last effort to salvage a sanity defense." (#1-1 at 18). The court commented that his zoom testimony indicated that "[a]ge has taken its toll, I am sure," but that Dr. Wasyliw had located the report he sent to Beaumont. *Id.*

Horrell maintains that this finding was wrong and, as proof, he has submitted copies of emails between his aunt, Maria Vadeboncoeur, and Wasyliw from the fall of 2017. In these emails, Dr. Wasyliw told her he "searched all my records" and was unable to find mention of any such case. (#29 at 21). He concluded he "just was not involved." *Id.* As an initial matter, these materials were clearly available before the 2020 hearing, and Horrell, by choosing to proceed with his counsel is bound by his counsel's decision to not use these materials when cross examining Dr. Wasyliw. *See* #9-7 at 127–137 (exchange between state court judge and Horrell

at the evidentiary hearing explaining to Horrell that he could proceed *pro se* or proceed with his counsel, but his counsel would not be compelled to present this evidence). Moreover, these materials do not undermine the State court's credibility findings. It was clear at the hearing that Dr. Wasyliw had no independent memory of the case. While Dr. Wasyliw may not have been able to locate his report when he searched in 2017, he testified under oath in 2020 that he had located the report. Accordingly, the Court finds Horrell has failed to refute the state court's factual findings by clear and convincing evidence pursuant to 28 U.S.C. § 2254(e)(1).

Horrell also argues the Wasyliw letter falsely suggests that felony murder has no intent element, and is an absolute liability offense. (#1 at 9–10). Specifically, the letter states:

Unfortunately I cannot offer a recommendation for a psychologically based defense that might be applicable to [Horrell]. The problem is that the homicide occurred during the commission of another crime (It is our understanding of Illinois criminal law, that a person who commits a crime is responsible for any deaths that occur during the commission of the crime, regardless of whether or not the defendant committed the homicide itself or intended to. If your client was in fact committing a home invasion as charged he would be responsible for any death that occurs, regardless of any medical state he may have been in at the time. Since there is evidence that he went to the residence for the purpose of burglary an insanity defense in regard to the home invasion would not apply since that planning shows that he understood that his behavior was against the law at the time of the crime.

(#1-1 at 31). Reading the entire passage, it is clear the letter was not suggesting that no intent was needed at all. Rather that because there was clear evidence he *intended* the home invasion; Illinois law does not require any further intent to commit homicide for purposes of the felony murder conviction. This is an accurate statement of the law. See 720 ILCS 5/9-1(a)(3) ("A person who kills an individual without lawful justification commits first degree murder if, in performing the acts which cause the death . . . he or she, acting alone or with one or more participants, commits or attempts to commit a forcible felony other than second degree murder, and in the course of or in furtherance of such crime or flight therefrom, he or she or another

participant causes the death of a person.”); *see also People v. Belk*, 203 Ill. 2d 187, 197 (2003) (“whether the perpetrator intended to kill the victim is irrelevant for purposes of the felony-murder statute”).

2. Ground One

In his first ground for relief, Horrell argues his rights under *Ake v. Oklahoma*, 470 U.S. 68 (1985), were violated. Respondent argues, as independent claim, Horrell waived his *Ake* claim when he pled guilty. (#8 at 9 (citing *Tollett v. Henderson*, 411 U.S. 258, 267 (1973) (where a petitioner has pleaded guilty “he may not thereafter raise independent claims relating to the deprivation of constitutional rights that occurred prior to the entry of the guilty plea.”))). However, a voluntary plea of guilty only waives “non-jurisdictional defenses including those constitutional violations not logically inconsistent with the valid establishment of factual guilt.” *United States v. Fitzgerald*, 6 F. App’x 408, 409 (7th Cir. 2001) (quoting *United States v. Nash*, 29 F.3d 1195, 1201 (7th Cir.1994)). Claims that a defendant “was prevented from establishing that [he] was not guilty by reason of insanity is precisely the type of violation logically inconsistent with the valid establishment of factual guilt that is excepted from the general waiver rule.” *Id.* Accordingly, the Court does not agree that the claim is waived by the guilty plea if what Horrell is actually seeking to raise an *Ake* violation independent from his ineffective assistance of counsel claim.

However, the record shows the state court did not violate *Ake*.³ In *Ake*, the Supreme

³ Respondent contends state court deference applies because “[w]hen a federal claim has been presented to a state court and the state court has denied relief, it may be presumed that the state court adjudicated the claim on the merits” in the absence of specific evidence to the contrary. *Harrington v. Richter*, 562 U.S. 86, 99 (2011). And, like here, where state court “expressly addresses some but not all of a prisoner’s claims,” a federal court must presume that the state court denied all of the petitioner’s claims on the merits and that ruling “is subject to deferential review” under AEDPA. *Lee v. Avila*, 871 F.3d 565, 567–68 (7th Cir. 2017) (citing *Johnson v. Williams*, 568 U.S. 289, 298 (2013)). However, as independent claim Horrell’s *Ake* claim easily fails both under deferential review and under de novo review. Accordingly, the Court declines to resolve this dispute.

Court held “when a defendant has made a preliminary showing that his sanity at the time of the offense is likely to be a significant factor at trial, the Constitution requires that a State provide access to a psychiatrist’s assistance on this issue if the defendant cannot otherwise afford one.”

Ake, 470 U.S. 74. But here, the state court granted Horrell’s counsel’s request to appoint mental health expert to examine Horrell and determine whether he was sane at the time of his offenses.

Horrell takes issue with the fact that no psychiatrist examined him with the specific purpose of assisting him with an insanity defense. However, the lack of an additional examination was due to Horrell’s decision, though the advice of counsel, to plead GBMI. (Horrell, of course, has separately raised whether his counsel rendered ineffective assistance of counsel by not obtaining additional assistance from an expert to further explore the potential of an insanity defense, which the Court will address below), not due to any order from the state court denying additional requested testing. The State’s only obligation under *Ake* was to “provide . . . access to competent psychiatric assistance in preparing the defense.” *Ake*, 470 U.S. at 77. And, while Horrell argues that the experts did not conduct the necessary exams and record review to reach their conclusions, “the Constitution does not entitle a criminal defendant to the effective assistance of an expert witness,” and, so Horrell may not raise an *Ake* claim “based on whether [the mental health expert] conducted an ‘appropriate’ examination.” *Wilson v. Greene*, 155 F.3d 396, 400-01 (4th Cir. 1998); *see also, e.g., Silagy v. Peters*, 905 F.2d 986, 1013 (7th Cir. 1990) (similar). Only “access” to a mental health expert was required. *See also Fitzgerald*, 6 F. App’x at 410 (finding that in order to show the defendant was denied a basic tool necessary to due process under *Ake*, the defendant must show the additional testing requested and denied by the trial court was “in fact necessary” for the mental health expert “to perform [the] *Ake* function”). As this was done by the state court, Horrell’s independent *Ake* claim is meritless.

3. Grounds Two and Three

In his second ground for relief, Horrell argues his GBMI plea “did not comport with due process/ 14th Amendment, due to false admonishments and no sanity exam was conducted.” (#1 at 13). Relatedly, in his third ground for relief, Horrell argues his counsel was ineffective “for failing to afford [Horrell] of his rights under *Ake*.” *Id.* at 22. While Horrell, raises them as two separate grounds, they are, in essence, one claim as he is attempting to attack “the voluntary and intelligent character of the guilty plea by showing that he received ineffective assistance of counsel.” *Tollett*, 411 U.S. at 267. Accordingly, the Court addresses them jointly.

A guilty plea “operates as a waiver of important rights, and is valid only if done voluntarily, knowingly, and intelligently, ‘with sufficient awareness of the relevant circumstances and likely consequences.’ ” *Bradshaw v. Stumpf*, 545 U.S. 175, 183 (2005) (quoting *Brady v. United States*, 397 U.S. 742, 748 (1970)). Ineffective assistance of counsel claims arise under the Sixth Amendment. *Strickland v. Washington*, 466 U.S. 668 (1984). Under *Strickland*’s two-part test, a petitioner must show both that his attorney’s performance was deficient and that he was prejudiced as a result. *Vinyard v. United States*, 804 F.3d 1218, 1225 (7th Cir. 2015). Courts, however, must “indulge a strong presumption that counsel’s conduct falls within the wide range of reasonable professional assistance.” *Strickland*, 466 U.S. at 690. A petitioner must also prove that he has been prejudiced by his counsel’s representation by showing “a reasonable probability that, but for counsel’s unprofessional errors, the result of the proceeding would have been different.” *Id.* at 694. Absent a sufficient showing of both cause and prejudice, a petitioner’s claim must fail. *United States v. Delgado*, 936 F.2d 303, 311 (7th Cir. 1991).

In the guilty plea context, “in order to satisfy the ‘prejudice’ requirement, the defendant must show that there is a reasonable probability that, but for counsel’s errors, he would not have pleaded guilty and would have insisted on going to trial.” *Hill v. Lockhart*, 474 U.S. 52, 59, 106 S. Ct. 366 (1970); *see also Wyatt v. United States*, 574 F.3d 455, 458 (7th Cir. 2009). The defendant must also show that to reject the plea agreement and go to trial would have been rational under the circumstances. *Padilla v. Kentucky*, 559 U.S. 356, 372 (2010). However, guilty pleas “should not lightly be with-drawn.” *United States v. Brown*, 973 F.3d 667, 715 (7th Cir. 2020). “Courts should not upset a plea solely because of post hoc assertions from a defendant about how he would have pleaded but for his attorney’s deficiencies. Judges should instead look to contemporaneous evidence to substantiate a defendant’s expressed preference.” *Lee v. United States*, 137 S. Ct. 1958, 1968 (2017).

Here, the Illinois State Appellate court affirmed the lower court’s finding that Horrell had not shown that his counsel was ineffective or that his plea was involuntary or unintelligent. While Horrell explains repeatedly in his filings that he is not seeking to raise the claims addressed by the Illinois State Appellate court, the Court finds it prudent to note that the Illinois Appellate Court’s decision on his claims was not “contrary to, [and did not] involve[] an unreasonable application of, clearly established Federal law, as determined by the Supreme Court of the United States,” and was not premised on an “unreasonable determination of the facts.” 28 U.S.C. § 2254(d). The state appellate court correctly cited the standard from *Strickland* and noted Horrell’s plea would not be voluntary or intelligent if he had a viable defense but was misled into thinking he did not. *Horrell*, 2022 IL App (3d) 200417-U ¶¶ 27-37. Moreover, the Illinois Appellate Court reasonably determined that the record showed that Horrell’s counsel’s conduct was not deficient because they had considered an insanity defense

and consulted with multiple mental health experts about such a defense and only concluded it was not viable after multiple experts reached that conclusion. *Id.* ¶ 37. Moreover, the Illinois Appellate Court reasonably found that Horrell could not show prejudice because he had not provided any basis to support his contention that he had a valid insanity defense. *Id.*; *see also id.* ¶ 32 (noting that “all doctors reported that defendant was fit to stand trial and that they could not help with an insanity defense” and that Horrell was “unable to point to a doctor who concluded that he had a viable insanity defense” nor to “specific conduct that necessarily manifests insanity”).

Of course, Horrell argues his claims here are different than what was analyzed by the state court and that Respondent’s briefing did not respond to his arguments. (#16 at 2). Unlike the analysis of the Illinois Appellate Court, Horrell argues that his plea was involuntary because he did not get the needed admonishments regarding his *Ake* rights and he did not receive a sanity exam but was told that he had received a sanity exam, and that counsel failed to “afford” Horrell of his *Ake* rights. While the Court can see the distinction, the overall ruling of the state court is still likely entitled to deference: “when a federal claim has been presented to a state court and the state court has denied relief, it may be presumed that the state court adjudicated the claim on the merits” in the absence of specific evidence to the contrary. *Richter*, 562 U.S. at 99. And, where a state court “expressly addresses some but not all of a prisoner’s claims,” a federal court must presume that the state court denied all of the petitioner’s claims on the merits and that ruling “is subject to deferential review” under AEDPA. *Lee*, 871 F.3d at 567-68.

Nevertheless, the claims are meritless under either deferential or de novo review. As a threshold matter, Horrell has not pointed to any authority supporting the notion that a specific admonishment on *Ake* is constitutionally required prior to a guilty plea and (as discussed above)

Horrell did not have rights under *Ake* to demand an any certain exam or procedures be followed by the mental health professionals assisting him in his case.⁴ Moreover, Horrell's repeated assertion that no sanity exam was conducted can be argued in only the most technical sense given the testimony at the post plea hearing and the credibility findings of the state court. Horrell claims that he was falsely told that he had "been examined for sanity with unfavorable expert opinion rendered," when he had really only been examined for fitness. (#1 at 9). It is true that an examination only for fitness to stand trial is insufficient to determine a defendant's sanity at the time of the crime. *See, e.g., Schultz v. Page*, 313 F.3d 1010, 1017 (7th Cir. 2002) (finding an *Ake* violation where the state court denied a motion for a sanity exam based, in part, on a finding that a fitness exam had found the defendant competent for trial). However, Dr. Rodgers testified they did not *only* examine Horrell for fitness, but conducted "a comprehensive evaluation," which was done "so that if [they are] asked to answer additional questions [they] wouldn't have to do a second evaluation." (#9-7 at 177-78). She further testified that while in other cases she may need additional information to give an opinion on sanity, she did not need additional information in this case. *Id.* at 179. And, further she testified that while her report did not include an opinion on sanity, she would have performed the same tests on Horrell if she had been asked for a report on sanity. *Id.* This testimony was further bolstered by Dr. Goldstein's testimony that in some cases "there are things that happen in proximity to the alleged offense itself that demonstrate very clearly at least in our opinion that this individual understood the

⁴ Horrell also argues his conviction is "not supported by the real evidence." *See, e.g.,* #1 at 12; #29 at 5. However, there is no federal requirement that a defendant be found sane in order to plead guilty. His counsel raised a similar claim in his post plea proceedings, but the claim supported by state law, not *Ake*. *See, e.g.,* #9-2 at 23-29 (arguing Horrell's GBMI plea did not comply with 725 ILCS 5/115-2). However, "it is not the province of a federal habeas court to reexamine state-court determinations on state-law questions. In conducting habeas review, a federal court is limited to deciding whether a conviction violated the Constitution, laws, or treaties of the United States." *Estelle v. McGuire*, 502 U.S. 62, 67-68 (1991); *Bradshaw v. Richey*, 546 U.S. 74, 76 (2005) ("[A] state court's interpretation of state law, including one announced on direct appeal of the challenged conviction, binds a federal court sitting in habeas corpus.").

illegality of their conduct,” and that the believed this was such a case based on the investigative reports. *Id.* at 97. In light of this testimony, which the state court found credible, Horrell’s claim that he had not been examined for sanity is disingenuous. While Dr. Rodgers may not have formalized her opinion in a report, she conducted all the necessary testing and review to make an opinion and conveyed her opinion to Horrell’s attorney.

Horrell has also not demonstrated any prejudice stemming from his lack of *Ake* knowledge, from not receiving additional testing or review by mental health professionals, or from his counsel’s advice. While Horrell highlights what did not happen—a specific in-person sanity exam from an expert a detailed review of past mental health records, or a written report from Dr. Rodgers or Dr. Simone that addressed sanity as opposed to just fitness (#1 at 14–15)—he has not addressed how this would have changed the experts’ ultimate opinions or the result in this case. He has not presented any evidence supporting an insanity defense and he has not even presented any evidence that a different mental health expert might have done additional testing or review given the facts in his case. Moreover, he has not grasped that, under Illinois law, the unrebutted evidence that Horrell planned the home invasion would defeat an insanity defense. *See* 720 ILCS 5/9-1(a)(3) (“A person who kills an individual without lawful justification commits first degree murder if, in performing the acts which cause the death . . . he or she, acting alone or with one or more participants, commits or attempts to commit a forcible felony other than second degree murder, and in the course of or in furtherance of such crime or flight therefrom, he or she or another participant causes the death of a person.”); *see also People v. Belk*, 203 Ill. 2d 187, 197 (2003) (“whether the perpetrator intended to kill the victim is irrelevant for purposes of the felony-murder statute”). Simply put, Horrell has not shown that an insanity defense would have been feasible had he proceeded to trial and he has not shown any

basis to believe he would have elected to proceed to trial without one. *See Lee*, 137 S. Ct. at 1968. Accordingly, Horrell's second and third grounds for relief are denied.

B. Petitioner's Remaining Motions

Petitioner's Horrell's Motion for Summary Judgment (#24) and Motion for Evidentiary Hearing (#29) are DENIED as moot in light of the Court's ruling on his Petition.

Finally, in Petitioner's Motion for Sanctions (#32) he argues that the Respondent "made material misrepresentation about facts pled by him" and "also reworded two of the three "grounds for relief" asserted by Petitioner in the § 2254 habeas petition, in an effort to cause the Court to erroneously apply AEDPA's deferential standard of review to all three grounds. Petitioner asks for sanctions pursuant to Rule 11 of the Federal Rules of Civil Procedure. While the Federal Rules of Civil Procedure are not universally applicable to habeas proceedings, "to the extent that they are not inconsistent with any statutory provisions or these rules, may be applied to a [§ 2254] proceeding." Rule 12 of the Rules Governing Section 2254 Cases in United States District Courts; *see also Bardney v. United States*, 945 F. Supp. 152, 153 (N.D. Ill. 1996) (considering sanctions against a petitioner's counsel). Here, however, the Court does not find sanctions appropriate. While Respondent may have reworded or misunderstood some of Petitioner's arguments, it appears far more likely that it was ensuring that any potentially meritorious issues were addressed. Upon review of the entire record submitted, the Court finds no cause for sanctions.

III. CERTIFICATE OF APPEALABILITY

Should Petitioner wish to appeal this decision, he must obtain a certificate of appealability. 28 U.S.C. § 2253(c)(1). A certificate may issue "only if the applicant has made a substantial showing of the denial of a constitutional right." 28 U.S.C. § 2253(c)(2). Where a claim is

resolved on procedural grounds, a certificate of appealability should issue only if reasonable jurists could disagree about the merits of the underlying constitutional claim *and* about whether the procedural ruling was correct. *Flores-Ramirez v. Foster*, 811 F.3d 861, 865 (7th Cir. 2016). Here, the Court does not find that reasonable jurists could disagree that the state court is entitled to deference on Petitioner's claims and/or that the claims are meritless. Accordingly, the Court declines to issue a certificate of appealability.

IV. CONCLUSION

For the reasons above, the Court DENIES Petitioner's Petition for Writ of Habeas Corpus pursuant to 28 U.S.C. § 2254 (#1). The Court DECLINES to issue a certificate of appealability.

Petitioner's Motion to Expand the Record (#31) is GRANTED to the extent that the Court reviewed and the evidence Horrell attached to the motion.

Petitioner's Horrell's Motion for Summary Judgment (#24) and Motion for Evidentiary Hearing (#29) are DENIED as moot in light of the Court's ruling on his Petition. Petitioner's Motion for Sanctions (#32) is DENIED.

This case is CLOSED. The Clerk is DIRECTED to issue judgment in favor of Respondent.

Signed on this 15th day of September 2025.

/s/ Colin S. Bruce
Colin S. Bruce
United States District Judge

APPENDIX C

People v. Phillip Horrell

Case No. 12-CF-541

FILED

OCT 06 2020

Sandra M. Cline
CIRCUIT COURT CLERK**Opinion on Defendant's Second Amended Motion to Withdraw Guilty Plea****Defendant's Case**

The thrust of the defendant's motion is that the defendant pleaded guilty to murder and attempt murder under a misapprehension of facts and law as a result of the ineffective assistance of his trial counsel. The misapprehension was that the insanity defense was not available to him, which led him to plead blind to charges of murder and attempt murder.

This misapprehension resulted from the defendant's attorneys misleading him as to the applicability of an insanity defense, resulting in the defendant pleading guilty but mentally ill.

In support of his motion, the defense first presented a stipulation that Dr. Eugene Wasyliw would testify that "he never conducted, observed or supervised a psychiatric examination of the defendant, Phillip Horrell, to determine sanity at the time of the offense." (Quoted passages are from transcript of the hearing held on this motion.)

The defendant then testified regarding his interactions with his attorneys leading up to his plea of guilty of November 1, 2013. Regarding the defense of insanity, he testified that his attorneys "foreclosed the defense from 8-25 -- on that visit on 8-25 and then again on the October 30 [when] Robert Regas came alone. He came at night, and he just foreclosed my defense altogether and said I don't have any, you know, any alternative but to plead guilty." The defendant further testified that assigned attorney Robert Regas "told me that, you know, I didn't have a defense to use and that I -- you know, if I went to trial and put the Court through that trouble that the Judge would be mad and he believed that he could get me a guilty but mentally ill plea agreement, and that I would get better treatment in DOC through that."

The defendant also testified that attorney Regas told him "pursuant to the report and they showed me the report that I was disqualified by my felony murder charges." He further testified that he was under the misapprehension that he was "gonna have to serve 85 percent," and that he did not have a right to present an affirmative defense of insanity because he had been examined by a psychiatrist who found that he was sane at the time of the offense.

On cross-examination the defendant admitted that he was informed that a guilty but mentally ill plea carried the same penalty range as a guilty plea and that the sentence for murder had to be served at 100% and not 85%. He did not deny being fully informed of his right to a jury trial, his rights at trial and the potential sentencing range he could receive at a sentencing hearing.

State's Case

Dr. James Simone testified for the state that he performed a fitness evaluation on the defendant, meeting with him on four or five occasions and found that the defendant was fit to stand trial. Dr. Simone also concluded that the defendant was trying to exaggerate mental illness symptoms based on the defendant's performance both on the test to evaluate his competency and on a test, which measures malingering.

Larry Beaumont testified that he was the lead attorney appointed by the public defender to represent the defendant. Beaumont testified that he had practiced criminal law for 27 years at the time of his appointment, with experience not only as a criminal defense lawyer, but also as a state and federal prosecutor. After receiving the police reports including the defendant's confession, he began to formulate a strategy that involved the defendant's mental state:

Q Did you start formulating a strategy for trial?

A A strategy for a defense immediately, correct.

Q What was the strategy for the defense immediately?

A It wasn't a very factually complicated case in my opinion and it was obvious that it was gonna involve Mr. Horrell's mental state.

Q So you were looking to get what -- what type of defense?

A Sanity. There was two things looking at initially. I knew he made a statement so I had to try to deal with that somehow so I was exploring whether or not he was competent to make the statement, but primarily overall it would have been sanity.

Q Did you request an examination by any certain group?

A The Isaac Ray Forensic Group.

Q Why did you request that they conduct the examination? A Because I've worked with them for many years. They're considered top people in the country, let alone Illinois. I was familiar with their work. We -- we had a good working relationship, and I knew they would do a good job.

Beaumont made it clear that he would be discussing an insanity defense with the Isaac Ray Group even though the initial order specified a fitness examination:

Q Did you talk prior to scheduling this -- this examination with Isaac Ray did you talk to anyone there?

A The director of the Isaac Ray Forensic Group.

Q And who was that?

A Diane Goldstein. Dr. Diane Goldstein.

Q And what did exactly did you talk to her about?

A About how -- what I expected to have with him -- happen in the case. I made it clear to her that I assumed this was ultimately gonna be a sanity issue. My client had suggested that early on, and I needed to explore that, and I wanted them to examine that and I also wanted them to determine -- as I said there was a statement in the case that we needed -- I needed to deal with, and I wanted to know if he could waive his Miranda Rights, that kind of thing.

Q Was the fitness evaluation a stepping stone then?

A It was. She may have recommended initially fitness. The idea was to get him examined by them for those purposes, that being sanity and also I needed an opinion about the -- the statement. Was there any issue with the -- with the statement.

Beaumont described the examination process:

Q Do you recall how long the examination took?

A Well, the -- I know he was -- had to make arrangements to have him shipped there for two days. I think it took them --

Q Two days?

A -- two days worth of -- and that -- and that's customary with them. They -- they're pretty thorough. They do a lot of testing. They interview based on the testing. I made arrangements that they got the criminal reports, police reports that kind of stuff.

Q So you sent the police reports?

A I didn't but I had the office -- the PD office do it.

Q Okay. You made sure they had everything they needed?

A Yeah. We had lengthy discussion about the case in general prior to them doing anything and then once I was -- I think I got their -- the deployment first because I wanted to make sure they were gonna be paid. Once I was sure they were gonna be paid cause it was a County case, then I made arrangements to get them documents or whatever they needed to get.

Beaumont described his reaction to learning that the Isaac Ray Group found the defendant fit:

Q Did you eventually get the results back regarding the fitness examination?

A I don't think I was given an opinion. They told me, yeah, he was fit, and in all honesty I didn't really question his -- in my mind I didn't really question his fitness. I was more concerned about the -- the ultimate defense in the case or defenses.

Q Did you talk to doctor -- to Diane any further?

A I talked to her several times throughout the process.

Q What were you talking to her about?

A Where we're going from here, what --

Q Where were you trying to go?

A I wanted ultimately to have a -- wanted to know if we had a viable insanity defense -- criminal responsibility defense.

Beaumont stressed the importance of an insanity defense in the defendant's case:

Q Without that did you see any -- did you see much luck in a trial without an insanity defense?

A In light of the fact that he gave a statement and he was found with -- as I understand found with blood on him, no. I mean I don't -- factually the case was relatively simple. The complicating issue was his mental state at the time.

Q So you had further discussion was Dr. Goldstein?

A Yeah. I talked to her several times about this case.

Q And did she finally give you any clue as to what she would recommend regarding insanity?

A After the testing she -- we discussed it. I think I -- there were other people with her when we -- cause we had like a—I was on the phone but there was--

Q Phone conference?

A She was with more than one person and the conclusion was that he -- she didn't think he qualified for a sanity defense -- insanity defense.

Beaumont did not end his pursuit of an insanity defense with Isaac Ray and instead followed up on a recommendation made by Dr. Goldstein:

Q Just so I -- just to make sure I got it correctly, you said she didn't think that he would qualify for an insanity defense?

A That's correct. Yes.

Q Did she make any recommendations?

A I believe she referred me to a -- another doctor that they deal with all the time, a Dr. Wasyliw.

Q And for the court reporter's benefit Dr Wasyliw is spelled W-A-S-Y-L-I-W. Did you work with Dr. Wasyliw before?

A Yes, many times.

Q And is that as both a prosecutor and a defense attorney?

A Yes. Yeah. I -- I dealt with Isaac Ray both Isaac Ray Center and then the Isaac -- what splintered off into the Isaac Ray Forensic Group on multiple occasions both with prosecution and as a defense attorney, and I had worked with Dr. Wasyliw on multiple occasions as part of both of those entities?

Q Okay, and what did you -- and you said you talked to Dr. Wasyliw on the phone?

A She -- she suggested I talk to Dr. Wasyliw about whether or not there could be a case made for his insanity.

Q And did you do that?

A And I did.

Beaumont then described his consultation with Dr. Wasyliw:

Q And do you recall approximately when?

A Within the time frame we're talking. Right after talking to her and then he -- I know he reviewed the documents and reviewed the records.

Q What documents and records did he have?

A He had access to everything Isaac Ray had.

Q And he reviewed that. Did you then have a phone conversation with Dr. Wasyliw?

A He contacted me and he said he reviewed everything and he just didn't -- agreed with Diane that there was not a viable insanity defense.

Q And he told you that orally?

A Correct, and I told him well I'm gonna need a written report on that but that's fine.

Q Did he send a report or just a letter?

A A letter. He sent me a e-mail I believe.

Q Show you what's been marked as People's Exhibit 1.

MR. BRANDSTRADER: No objection.

Q And that letter he does not recommend you pursuing an insanity defense?

A Correct. He acknowledges -- he consulted with -- with Diane's group and he considered the information that I provided him, and he agreed that in essence there was no viable insanity defense.

Beaumont then discussed the results with the defendant:

Q And did you have this conversation with -- this was with Mr. Horrell and Regas or just you and Mr. Horrell now?

A I think there were multiple conversations. I know -- I'm pretty confidence that initial conversation was with Mr. Regas. I think I met with Mr. Horrell again and discussed what we were gonna do but the bottom line is, it was clear there was -- I made it clear to him that there's no insanity defense here, that in my opinion our best option would be to try to work out some kind of plea process.

Q And did Mr. Horrell -- how did he react to that?

A He -- he was agreeable. He -- I gave him my reasoning what I thought was possible and I mean he -- he initially was upset that there was no sanity defense but I'm not an expert and the experts are telling -- these are probably the best people in the country. They're telling me that insanity defense is not viable, and I trust what they tell me and so after that he agreed to pursue -- to pursue what I suggested would be the best option and that was the plea in light of the fact that we had a -- a confession, it was a factually horrible case in the sense of jury appeal. I thought his best options were in essence to plead, accept responsibility and -- on hopefully we can mitigate the sentence with the Court to get a somewhat lesser sentence, and I -- I talked him into -- we -- I believe we hired a mitigation expert to --

Q And at sentencing you presented that mitigation?

A And we presented that at sentencing, correct.

Under cross-examination, Beaumont explained his reliance on Isaac Ray:

I believe that Isaac Ray knew exactly what my goal was of having him examined in the first place, that ult -- that my question was would he qualify for a sanity defense and they made it clear to me after the testing and after their conferences and discussions, they made it clear to me that he would not qualify. They refer to Wasyliw to get another opinion. They -- they were asking if he might be more liberal on the concept. I talked to Dr. Wasyliw. Wasyliw conferred with them and reviewed the reports and Wasyliw called me back and says, you know, Larry I just don't believe -- I do not believe he would qualify for an insanity defense.

Dr. Diana Goldstein testified next for the state. Dr. Goldstein is the owner and founder of the Isaac Ray Forensic Group in Chicago and also the director of

neuropsychology and the director of neuropsychology and public safety. She has a PhD in clinical neuropsychology.

She described being contacted by Larry Beaumont for the purpose of initially performing a fitness examination. She described that whenever she takes a case for a fitness evaluation, she also evaluates the defendant for criminal responsibility:

Q Did you talk about any other issues regarding the -- Mr. Horrell or was it just fitness?

A Well, whenever I have an in-take with an attorney, whatever side it may be, we always ask about criminal responsibility issues. In other words, adversarial issues here with fitness. Do you want to explore or look at criminal responsibility issues. We do that anyway. I don't recall as I sit here today whether he specifically said could you have a look at that right then and there. I think he did, but I would have offered to do that anyway because we do that in -- in every case and if you think there is a criminal responsibility issue there related to mental health, we'd always talk to the attorney about that. So I would have encouraged him to encourage his client to be open with us so that he would not have to have a separate interview for that. I continue to do that today. That's how we approach things.

Dr. Goldstein examined the defendant in conjunction with Dr. Tracy Tilton. Dr. Goldstein described her role as conducting cognitive testing which requires a neuropsychology background. Dr. Goldstein described the testing she conducted on the defendant as well as the results:

"... [O]ur cognitive exam is very comprehensive. We conduct an effort test which are simply called malingering tests, but they're really tests of effort and engagement, how well is the person giving us the -- how much effort are they giving us and that's important because if they're not giving me proper effort, the rest of the data are invalid and we can determine -- Mr. Horrell gave me what I call variable effort. He provided extremely poor effort on certain measures. Some were what we call in the chance range. In other words, blind folded and flipping a coin you could do the same, and one of the centers was in fact below chance, significantly below chance, which obviously can't occur randomly. One would have to intentionally perform in that manner ... (I)n every single cognitive area he performed normally at least on some tests. So this is important from a fitness

standpoint because it means that he can attend, he can follow, his working memory is normal, multiple things in his mind going, he can learn and remember things, he can solve problems, he can use judgments, he's cognitively flexible, his language and vocabulary skills are normal. There was simply nothing from a cognitive standpoint to suggest that he had any pervasive cognitive findings, and that was the bottom line. The bottom line take away from all of that that notwithstanding poor effort he had intact cognitive functioning."

Dr. Goldstein then commented on the relationship between the lack of cognitive defect and sanity:

"So for instance if somebody were severely cognitive impaired and simply did not understand what they were doing was wrong because they lack the capacity from a cognitive standpoint to understand the difference between something that's right and wrong from a legal standpoint, then -- then, you know, then it would be relevant. Clearly that's not gonna be the case in this case because from a cognitive standpoint he's clean."

Following her examination, which lasted 4 hours, and that of Dr. Tilton, Dr. Goldstein discussed the findings with Dr. Tilton. Later, Larry Beaumont was informed that Isaac Ray did not feel that the defendant met the criteria for insanity.

This determination was not based simply on the test results but also on the circumstances of the offense:

"...[T]here are a number of things that happened around the alleged offense that would have impacted Dr. Rogers and my own opinion as we looked at it objectively about why we -- we could not support a sanity -- an insanity, you know, finding in this case in particular."

Asked by the court whether anything else could have been done in evaluating the defendant for sanity if the primary focus initially had been has sanity rather than

competency, Dr. Goldstein again pointed to the significance of the circumstances surrounding the crime:

"...[C]ould there have been more of a focus on psychiatric history and could we have reviewed those, could we have done what we call collateral interviews; speak to family, et cetera[?]. Sure. You can always do those things but sometimes to be honest it just isn't necessary because there -- there are things that happen in proximity to the alleged offense itself that demonstrate very clearly at least in our opinion that this individual understood the illegality of their conduct."

In making this statement, although not brought out in her testimony at the hearing on the motion to withdraw the guilty plea, Dr. Goldstein was surely referring to the police reports in this case. Within these reports the defendant confessed that following his release from prison he had substituted crack cocaine for his medication, was out of money after having spent \$700-800 on the drug, and finding himself in need of something of value to buy more cocaine, he remembered a home that he burglarized years before, the home of an 81 year old doctor and his 81 year old wife, and he remembered seeing a large amount of jewelry in a dresser in their home, and he then went to the this home, and that he had a knife on him to use to cut the screen and make entry into the home, and that when he arrived, he rang the doorbell and the doctor's wife answered the door and he asked to use the phone, claiming that his truck had broken down, and that after pretending to use the phone he entered the home, and then stabbed both the doctor and the doctor's wife many times, leaving the doctor dead from stab wounds to the head, neck, face and hands and the doctor's wife severely wounded with stab wounds to the head and neck, and after he fled the home, he inflicted a non-lethal stab wound to his own throat in apparent remorse for his crimes.

According to Dr. Goldstein, Beaumont did not simply acquiesce to Isaac Ray's opinion, but pressed Dr. Goldstein to suggest another expert who might come to a different opinion:

"... [O]nce Mr. Beaumont was done talking it through with us which we did several times he asked -- he -- he inquired whether I could provide the names of some other colleagues to him that he could perhaps get a second opinion from ... And I offered him I think a couple of names. As I sit here today other than Dr. Wasyliw I can't recall who that would have been but I'm sure I gave him more than one name."

Dr. Eugene Wasyliw testified next. Dr. Wasyliw retired in 2015, after practicing in the field of forensic psychology for 35 years. Dr. Wasyliw testified that he had practiced with the Isaac Ray Group, and that he was familiar with both Dr. Diane Goldstein and attorney Larry Beaumont. Dr. Wasyliw testified he had found on his computer the one-page report from July 10, 2013 that he submitted to Larry Beaumont, but that he had no independent recollection of discussing the report with Larry Beaumont.

Attorney Robert Regas testified that he had been a licensed attorney for 11 years and that he was familiar with the defendant. He was appointed together with Larry Beaumont in 2012 to represent the defendant. He testified that he previously represented the defendant on a residential burglary case in Iroquois County.

He testified that he and Beaumont discussed the strategy of using an insanity defense, given the defendant's psychiatric history, including prescribed psychotropic medications. He recalled sending the police reports to Isaac Ray and discussing the defense of insanity with Dr. Goldstein and Dr. Wasyliw. In these discussions, he recalled Dr. Goldstein stating that an insanity evaluation would be pointless given the intent evidenced by the circumstances of the crime, including the defendant's admission that he intended to commit a burglary at the time of the murders. Regas testified that the defense team sought a second opinion from Dr. Wasyliw, a forensic psychologist, but that Dr. Wasyliw also told them that he could not help the defense on the issue of insanity in light of the felony murder charge, as the defendant had the intent to commit a

residential burglary at the time of the crimes. This intent was apparent from the defendant's own statement to the police. Regas recalled the doctors telling them that it would be worthless to perform additional sanity examinations on the defendant.

He further recalled meeting with the judge in chambers to make sure the court would accept a plea of guilty but mentally ill. Regas also recalled explaining the Wasyliw report to the defendant as well as a plea of guilty but mentally ill. The defendant had no objection to a plea of guilty but mentally ill; in fact, the defendant felt bad about his actions and told Regas that he wanted to plead guilty.

Dr. Tracy Tilton [Rogers at time of examination] testified last for the state. Dr. Tilton is a PhD in clinical psychology, with 14 years' experience. She examined the defendant on November 9 and again on November 16, 2012. She spent 6-8 hours with the defendant, performing a psychological and personality evaluation, a fitness evaluation and a background interview.

She performed a mental status assessment, and found the defendant to be oriented to date, time and place. Her opinion was that he was fully alert and although he said he was not properly medicated he was able to be examined. In this assessment, she questioned the defendant concerning his education, his medical and psychiatric history and his substance abuse history.

Dr. Tilton administered an MMPI-2 personality test, to help aid her diagnosis. She also administered a PAT examination to measure his emotional functioning.

She formed an opinion that the defendant was fit to stand trial. She gave him diagnoses of bipolar with psychotic features, depression and crack cocaine dependence.

She testified that the evaluation and testing process is very thorough which allows them to determine whether they will be able to help the client not only on the issue of fitness but also on the issue of criminal responsibility (sanity).

In this case, Dr. Tilton formed an opinion based on her conversation with the defendant concerning his recollection of the events the night of the crime and the tests she performed that she "could not help with the sanity defense."

In collaboration with Dr. Weinstein she communicated this finding to Larry Beaumont.

Court's Findings

Having reviewed the transcript of the defendant's plea on November 1, 2013, it is clear that the defendant had no misapprehension as to the charges to which he was pleading guilty, nor did he have any misapprehension as to the potential sentences he could receive as a result. It is further clear that the defendant was under no misapprehension as to the nature of the pleas to murder and attempt murder, namely, that he was entering into pleas which could result in the defendant receiving a sentence of natural life.

It is of particular note that in finding a factual basis for the plea of guilty the court did not rely on the state to provide a factual basis, but instead asked the defendant to tell the court what happened.

The defendant then described in detail the crimes he committed:

"I went to the Goldenstein house knowing that they had a pretty large amount of jewelry in the dresser, and I had a knife on me, not to kill, but to cut a screen and commit entry into somebody's house that wasn't home, and I had been smoking crack all night long. I spent probably \$700 to \$800 on crack cocaine. I was off my medication so I was really out there, you know, and my mind wasn't right. I pushed the doorbell and Mrs. Goldenstein answered the door. I asked her if she -- if I could use her phone that my truck had a problem. She said sure. She then allowed me to use her phone, and I gave it back to her. When I did, I just stepped inside the house. I don't know what really prompted me to start swinging the knife around, but I did. I pulled out the knife out of my pocket and I stabbed both of them many times and killed Mr. Goldenstein. I don't know what to say, you know. Right now what can you say about

something like that. You know, sorry just doesn't seem to cut it and, you know, it doesn't bring a man back and I hurt Mrs. Goldenstein real bad. You know, stabbing her like I did and taking her husband's life. I really don't remember the exact specifics of what happened but I know I was out of control for the most part."

This clear recitation of the events on the night he committed the crimes of murder and attempt murder obviously played a crucial role in the formation of opinions by Dr. Goldstein, Dr. Tilton and Dr. Wasyliv that they could not help the defendant with an insanity defense. The defendant recalls the details of what he did on the night he killed one 81-year-old victim and attempted to kill another 81-year-old. More importantly, he recalls why he went to their home. That it was for the purpose of committing a residential burglary. He had a tool for that purpose with him, a knife which he intended to use to cut through a screen and enter the house. He knew he was committing a crime. He spelled out the elements of his crime when he pled guilty. He could appreciate the criminality of his actions:

- I went to the Goldenstein house knowing that they had a pretty large amount of jewelry in the dresser;
- I had a knife on me, not to kill, but to cut a screen and commit entry into somebody's house that wasn't home;
- I just stepped inside the house;

He intended to commit a residential burglary. He tells us this. He entered the residence for this purpose. He tells us this. In the course of this forcible felony, he kills one, maims another. He tells us this. He remembers and admits every element of first-degree murder.

When it is over, what does he do? He cuts, to some degree, not nearly with the ferocity he cut Dr. Goldenstein and his wife, but he cuts his neck to the point that he requires medical attention. Why? He tells us. He is full of shame and remorse. He has done a terrible thing. Consciousness of guilt minutes after the commission of the crime.

He is aware of the criminality of his acts shortly after the crime, a little later when he gives a statement to the police, and a year later when he pleads guilty.

Three doctors of clinical psychology, forensic psychologists examine the defendant.

Dr. Simone spent several hours with the defendant. His conclusions — the defendant is fit and he is exaggerating symptoms of mental illness.

Dr. Goldstein spent several hours with the defendant. Her conclusions - He gave poor effort, in her clinical language. Translation - he was exaggerating what he thought would be symptoms of mental illness. The same phenomenon observed by Dr. Simone.

Dr. Tilton spent several hours with the defendant. Her conclusion — she could not help with an insanity defense.

Dr. Wasyliv. A fourth doctor, called in to review records at the request of the defense counsel in a last effort to salvage a sanity defense. We saw him testify by zoom. Age has taken its toll, I am sure. But, he located the report he sent to Larry Beaumont. The report which spelled out his opinion that he could not help the defendant with an insanity defense.

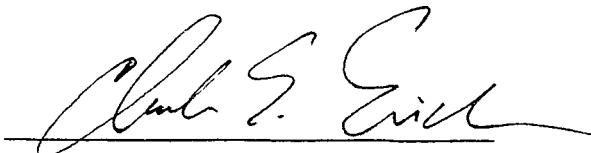
The defendant is entitled to a competent defense. He received a competent defense in this case.

What he did not receive was the sentence he hoped for when he pled guilty.

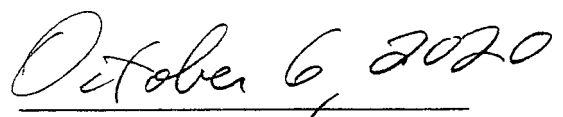
There was no misapprehension here; rather, there is disappointment.

Disappointment is not a basis for withdrawal of a guilty plea.

The defendant's motion to withdraw guilty plea is denied.



Circuit Judge



Date

APPENDIX D

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

2022 IL App (3d) 200417-U

Order filed October 21, 2022

IN THE
APPELLATE COURT OF ILLINOIS
THIRD DISTRICT

2022

THE PEOPLE OF THE STATE OF	)	Appeal from the Circuit Court
ILLINOIS,	)	of the 21st Judicial Circuit,
	)	Kankakee County, Illinois,
Plaintiff-Appellee,	)	
	)	Appeal No. 3-20-0417
v.	)	Circuit No. 12-CF-541
	)	
PHILLIP L. HORRELL,	)	Honorable
	)	Clark E. Erickson,
Defendant-Appellant.	)	Judge, Presiding.

JUSTICE DAUGHERITY delivered the judgment of the court.
Justices Hettel and Peterson concurred in the judgment.

ORDER

¶ 1 *Held:* (1) Defendant's void sentence claim is barred by *res judicata* as he raised the claim in a prior appeal. (2) The court did not err in denying defendant's motion to withdraw guilty plea. (3) Defendant did not receive ineffective assistance of counsel.

¶ 2 Defendant, Phillip L. Horrell, pled guilty but mentally ill (GBMI) to first degree murder and attempted murder. He appeals the Kankakee County circuit court's denial of his motion to withdraw guilty plea, arguing that his sentence is void, the court erred in denying his motion to withdraw guilty plea, and he received ineffective assistance of counsel. We affirm.

¶ 3

I. BACKGROUND

¶ 4

In November 2013, defendant pled GBMI to first degree murder (720 ILCS 5/9-1(a)(3) (West 2012)) and attempted first degree murder (*id.* §§ 8-4(a), 9-1(a)(1)). The State alleged that defendant, while committing residential burglary, stabbed James Goldenstein, thereby causing his death, and that with the intent to commit first degree murder, stabbed Betty Goldenstein.

¶ 5

Prior to his plea, defendant was examined by two psychologists. One psychologist, Dr. Tracy Rogers, found that defendant appeared to be suffering from bipolar disorder and an addiction to crack cocaine.

¶ 6

A second psychologist, Dr. James Simone, diagnosed defendant with anxiety disorder, polysubstance dependence, malingering, and antisocial personality disorder. Both psychologists found defendant fit to stand trial.

¶ 7

A third psychologist, Dr. Orest Wasyliv, wrote a letter to defense counsel stating that he reviewed the matter and discussed it with colleagues in forensic psychiatry but did not interview defendant. He stated that he could not assist in an insanity defense, because it was his understanding that defendant committed the murder and attempted murder while committing home invasion. An insanity defense would not apply to the home invasion because defendant's planning showed he understood his behavior was against the law at the time of the offense. The insanity defense therefore could not apply to any charge arising from the home invasion.

¶ 8

On November 1, 2013, defendant pled GBMI to felony murder and attempted first degree murder. The court admonished defendant and informed him that the possible sentencing range for the murder charge was 20 to 60 years' imprisonment and that it could be extended to 100 years' imprisonment or life imprisonment because James was over 60 years old when he was killed. The court further informed defendant that he could receive a sentence of 6 to 30 years'

imprisonment for the attempted murder charge, which would be served consecutively to the murder sentence. Defendant could not receive good-conduct credit for either sentence and must serve 100% of each. Defendant stated that he understood the possible sentencing penalties he faced for pleading guilty.

¶ 9 The court asked defendant to provide the factual basis. Defendant told the court that he went to the Goldensteins' residence, because he knew they kept a large amount of jewelry there. He brought a knife with him to gain entry to the residence to steal the jewelry. When he arrived at the residence, he rang the doorbell, and Betty answered the door. Defendant asked Betty if he could use her phone. She allowed defendant to make a call. When defendant handed the phone back to her, he pulled out his knife and started stabbing Betty and James. Betty survived, but James died from his injuries. The Goldensteins were both 81 years old at the time of the offense.

¶ 10 The court found that the factual basis substantiated the charges and accepted defendant's guilty plea. The court further conducted a hearing regarding defendant's mental capabilities at the time of the offense. It reviewed the medical reports from Simone and Rogers and found defendant to be guilty but mentally ill.

¶ 11 On April 16, 2014, the court sentenced defendant to natural life imprisonment for first degree murder and a consecutive term of 30 years' imprisonment for attempted first degree murder. Defendant moved to reconsider his sentence and to withdraw his guilty plea, which the court denied.

¶ 12 Defendant filed a direct appeal. In 2015, this court remanded for new postplea proceedings held in compliance with Illinois Supreme Court Rule 604(d) (eff. Dec. 3, 2015). *People v. Horrell*, No. 3-14-0370 (2015) (unpublished minute order).

¶ 13 In May 2020, defendant filed, as a self-represented litigant, a petition for relief from judgment pursuant to section 2-1401(f) of the Code of Civil Procedure (735 ILCS 5/2-1401(f) (West 2020)). He argued that his convictions and sentences were void because the court exceeded statutory authority and thereby its jurisdiction when it accepted: (1) the GBMI plea without defendant having been examined for sanity; (2) the plea as to first degree murder without a sufficient factual basis; and (3) the plea as to attempted first degree murder when defendant did not actually plead guilty to that charge and there was not a sufficient factual basis. The court dismissed the petition, and defendant appealed. The appeal was docketed as case No. 3-21-0169.

¶ 14 On August 28, 2020, while on remand from the direct appeal, defendant filed an amended motion to withdraw guilty plea raising a variety of issues, including: (1) that the plea was void because the court exceeded its statutory authority in accepting the GBMI plea without a proper sanity examination of defendant, (2) that there was not a sufficient factual basis for the plea; (3) there was credible evidence providing doubt that defendant was guilty; (4) plea counsel was ineffective; and (5) defendant misapprehended that he was found sane.

¶ 15 The hearing on defendant's amended motion to withdraw was held on September 24, 2020. Simone testified that he examined defendant prior to his plea and found him competent.

¶ 16 Dr. Diane Goldstein testified that she had assigned Rogers to defendant's case but had performed the neuropsychology testing on defendant herself. She found that defendant intentionally performed poorly on the testing and found him to be malingering. She did not further evaluate defendant. She discussed an insanity defense with defense counsel and told him that she could not help with that. She referred defense counsel to Wasyliw.

¶ 17 Rogers also testified that she conducted the fitness interview and found defendant fit for trial. She also discussed the insanity defense with defense counsel and stated that she could not

help with that part of the case. She testified she did not address sanity in her reports, but that she would have performed the same tests on defendant if she had been asked for an opinion on sanity. Based on those tests and her observations of defendant she did not believe she could assist further in an insanity defense.

¶ 18 Robert Regas testified that he and Lawrence Beaumont were defendant's attorneys and had discussed the possibility of an insanity defense. Regas spoke with Goldstein and chose not to proceed with getting an examination for insanity, because it was Goldstein's assertion that it would be pointless. They also sought a second opinion in Wasyliw and received a letter in response stating that he also could not help them with an insanity defense. Regas further testified that he and Beaumont discussed the doctors' opinions with defendant and explained the plea of GBMI. Regas stated that defendant indicated he understood.

¶ 19 The circuit court denied defendant's motion to withdraw his guilty plea. Defendant appealed, and we docketed the case as appeal No. 3-20-0417.

¶ 20 While this appeal was pending, defendant filed, as a self-represented litigant, a petition for postconviction relief asserting actual innocence based upon newly discovered evidence in October 2020. The court dismissed the petition at the first stage. Defendant appealed, and that appeal was docketed as case No. 3-20-0488. Thereafter, we granted defense counsel's unopposed motions to consolidate the appeals in case Nos. 3-20-0488 and 3-21-0169, which included defendant's appeal regarding the court's dismissal of his petition under section 2-1401(f). 735 ILCS 5/2-1401(f) (West 2020). On January 12, 2022, we allowed counsel to withdraw and affirmed the judgments of the circuit court in these cases. *People v. Horrell*, No. 3-20-0488 (2022) (unpublished dispositional order).

¶ 21

II. ANALYSIS

¶ 22 Defendant raises four arguments in his opening brief. However, several of the arguments overlap and can be distilled to the following issues: (1) his sentence is void, (2) his plea is invalid because it was made unknowingly and involuntarily, and (3) he received ineffective assistance of counsel. We address each issue in turn.

¶ 23 A. Void Sentence

¶ 24 Defendant first argues that his plea was taken in violation of statutory authorization and is therefore void. Specifically, defendant was not properly admonished under Illinois Supreme Court Rule 402, and the court failed to comply with the statutory requirements set forth prior to accepting a GBMI plea. 725 ILCS 5/115-2(b) (West 2012).

¶ 25 The issue of whether defendant's sentences are void has already been decided by this court. See *Horrell*, No. 3-20-0488. In that appeal, defendant raised the same void sentence issue. We found that a judgment is only void if it was entered by a court lacking jurisdiction or "was based on a statute that is facially unconstitutional and void *ab initio*." *People v. Abdullah*, 2019 IL 123492, ¶ 13. Defendant did not and still does not allege that his judgment was based on a facially unconstitutional statute. Further, this court has already determined that the circuit court had both subject matter and personal jurisdiction over defendant. See *Horrell*, No. 3-20-0488. Defendant has not raised an argument seeking to avoid the procedural bar of *res judicata* to allow him to obtain review of this issue. *People v. Kines*, 2015 IL App (2d) 140518, ¶ 20. Therefore, defendant's convictions and sentences are not void.

¶ 26 B. Guilty Plea

¶ 27 Defendant argues that his guilty plea should be withdrawn because he has a credible insanity defense. He contends that the report issued by Wasyliw when defendant had never been interviewed by him prevented him from raising an insanity defense. He also argues that he was

under the misapprehension that he could not utilize an insanity defense and thus could not make a knowing and voluntary plea.

¶ 28 A defendant has no absolute right to withdraw a guilty plea. *People v. Baez*, 241 Ill. 2d 44, 110 (2011). “Withdrawal is appropriate where the plea was entered through a misapprehension of the facts or of the law or where there is doubt as to the guilt of the accused and justice would be better served through a trial.” *People v. Hughes*, 2012 IL 112817, ¶ 32. Where a defendant seeks to withdraw a guilty plea based on a claim of misapprehension of law or facts, defendant has the burden of proving a “manifest injustice” under the facts involved. *People v. Delvillar*, 235 Ill. 2d 507, 520 (2009). “In the absence of substantial objective proof showing that a defendant’s mistaken impressions were reasonably justified, subjective impressions alone are not sufficient grounds on which to vacate a guilty plea.” *People v. Davis*, 145 Ill. 2d 240, 244 (1991). We review the circuit court’s denial of a motion to withdraw a guilty plea for an abuse of discretion. *Delvillar*, 235 Ill. 2d at 519.

¶ 29 In Illinois, everyone is presumed sane and cannot raise the affirmative defense of insanity without some evidence of it. *People v. Silagy*, 101 Ill. 2d 147, 168 (1984). To properly assert a defense of insanity, defendant must show he “is not criminally responsible for conduct if at the time of such conduct, as a result of mental disease or mental defect, he lacks substantial capacity to appreciate the criminality of his conduct.” 720 ILCS 5/6-2(a) (West 2012). Defendant has the burden to prove by clear and convincing evidence that he was insane at the time he committed the crime. *Id.* § 6-2(e).

¶ 30 Additionally,

“no Illinois case that has vacated a defendant’s guilty plea solely or merely on the basis that a defendant might have a defense worthy of consideration. Such a rule

would totally undermine the finality of guilty pleas. *** While having a defense worthy of consideration may be a significant element of a motion to withdraw a guilty plea, it is, standing alone, not a sufficient element.” *People v. Carlson*, 179 Ill. App. 3d 1050, 1055 (1989).

¶ 31 Besides having a “defense worthy of consideration,” defendant must also show he was under a misapprehension of fact or law when entering into his guilty plea. *Id.*; *People v. King*, 1 Ill. 2d 496, 501 (1953); *People v. Cosby*, 137 Ill. App. 3d 854, 856 (1985). However, while a guilty plea may be involuntary due to a misapprehension as to sentencing alternatives if defendant was actually unaware of the possible punishment, a guilty plea is not revocable merely because defendant subjectively believed that he would receive a certain sentence but did not. See *People v. Hale*, 82 Ill. 2d 172, 176 (1980). Defendant must show a reasonable justification for that belief. *Id.*

¶ 32 Defendant argues that his insanity defense is “worthy of consideration,” but provides no additional evidence to support that contention. The only allegations in support of the insanity defense are that defendant was evaluated for fitness, but his attorney informed him that the insanity defense would be of no avail. Defendant was examined multiple times by several doctors. All doctors reported that defendant was fit to stand trial and that they could not help with an insanity defense. Not only is defendant unable to point to a doctor who concluded that he had a viable insanity defense, he also cannot point to specific conduct that necessarily manifests insanity.

¶ 33 Also, we note that evidence of criminal planning bears against a finding of insanity. *People v. Gilmore*, 273 Ill. App. 3d 996, 1000 (1995). During his plea, defendant stated that he went to the Goldensteins’ property knowing that they had a large amount of jewelry and went to

their home with the intention to steal the jewelry. Defendant himself admitted to criminal planning, diminishing his argument that he has a viable defense of insanity. The record does not support defendant's contention on appeal that he was insane at the time of the offense.

¶ 34 C. Ineffective Assistance of Counsel

¶ 35 Defendant argues that counsel was ineffective for failing to raise and develop an insanity defense. According to defendant, a properly developed insanity defense would have allowed for a finding of not guilty by reason of insanity at trial.

¶ 36 For an ineffective assistance claim to succeed, defendant must allege deficient performance and prejudice. *Strickland v. Washington*, 466 U.S. 668 (1984). "Generally, counsel's choice of an appropriate defense is a matter of trial strategy or tactics not reviewable under the *Strickland* test, unless that choice is based upon a misapprehension of the law." *People v. Garmon*, 394 Ill. App. 3d 977, 987 (2009). "Misapprehension of a defense theory may be shown where evidence is presented in such a manner that the [finder of fact] is left with no choice but to convict defendant of the offenses charged." *Id.* Defense counsel has an obligation to investigate every possible defense. *People v. Domagala*, 2013 IL 113688, ¶ 38. But, counsel is not ineffective for failing to raise an insanity defense when there is no evidence to support the claim. See *People v. Wood*, 2014 IL App (1st) 121408, ¶ 77.

¶ 37 We have already concluded that there is no evidence to support the prejudice component—that defendant would succeed if he had raised an insanity defense. *Supra* ¶¶ 31-32. Moreover, the record clearly establishes that counsel did not perform deficiently. Counsel investigated a potential insanity defense by having defendant evaluated by multiple psychological experts and counsel discussed the defense with defendant. Defendant fully understood the options available to him and voluntarily chose to plead GBMI. Defendant cannot

now argue that he received ineffective assistance of counsel because he did not know he could utilize an insanity defense when the topic was clearly broached with counsel.

¶ 38

III. CONCLUSION

¶ 39

The judgment of the circuit court of Kankakee County is affirmed.

¶ 40

Affirmed.

**Additional material
from this filing is
available in the
Clerk's Office.**