

NOTICE

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

2025 IL App (4th) 240868-U

NO. 4-24-0868

IN THE APPELLATE COURT

OF ILLINOIS

FOURTH DISTRICT

FILED

May 16, 2025

Carla Bender

4th District Appellate
Court, IL

THE PEOPLE OF THE STATE OF ILLINOIS,)	Appeal from the
Plaintiff-Appellee,)	Circuit Court of
v.)	Jo Daviess County
WILLIAM A. HART,)	No. 17CF37
Defendant-Appellant.)	
)	Honorable
)	Kevin J. Ward,
)	Judge Presiding.

JUSTICE VANCIL delivered the judgment of the court.
Justices Doherty and Lannerd concurred in the judgment.

ORDER

¶ 1 *Held:* Where postconviction counsel failed to comply with Illinois Supreme Court Rule 651(c) (eff. July 1, 2017), the appellate court reversed the dismissal of the postconviction petition and remanded for further second-stage proceedings.

¶ 2 In November 2017, defendant pleaded guilty to two counts of aggravated criminal sexual assault (720 ILCS 5/11-1.30(a)(2), (a)(8) (West 2016)). The trial court sentenced him to 36 years' imprisonment. Defendant did not file a direct appeal. In October 2018, defendant filed a *pro se* postconviction petition, which the court summarily dismissed. In March 2021, the Appellate Court, Second District, reversed and remanded for second-stage proceedings. *People v. Hart*, 2021 IL App (2d) 180845-U, ¶¶ 21-24. In October 2022, defendant's appointed counsel filed an amended postconviction petition. In May 2024, the court dismissed the amended petition. Defendant appealed.

¶ 3 On appeal, defendant argues postconviction counsel did not comply with Illinois Supreme Court Rule 651(c) (eff. July 1, 2017). The State concedes the error. We reverse and remand for further postconviction proceedings.

¶ 4 I. BACKGROUND

¶ 5 A. Guilty Plea and Sentence

¶ 6 In November 2017, defendant entered a fully negotiated guilty plea to two counts of aggravated criminal sexual assault (720 ILCS 5/11-1.30(a)(2), (a)(8) (West 2016)). The State dismissed three additional charges. The factual basis showed that defendant approached a female clerk at a gas station, forced her at gunpoint into his vehicle, and made her drive to his home, where he sexually assaulted her. When the police apprehended him shortly thereafter, they found items in his home connected to the sexual assault, including the gun and the victim's cell phone.

¶ 7 Trial counsel offered into evidence a list of defendant's prescription medications he was taking at the time for mental health issues, which included duloxetine, clonazepam, Lamictal, lithium, trazodone, and buspirone. Defendant told the trial court the medication did not impair his ability to enter the plea. Per the agreement, the court sentenced defendant to consecutive terms of 15- and 21-years' imprisonment, followed by 3 years to life of mandatory supervised release. Defendant did not file a direct appeal.

¶ 8 B. Postconviction Proceedings

¶ 9 In October 2018, defendant filed a *pro se* postconviction petition pursuant to the Post-Conviction Hearing Act (Act) (725 ILCS 5/122-1 *et seq.* (West 2018)), alleging numerous claims of ineffective assistance of counsel. Defendant attached his notarized affidavit to the petition, which noted his mental health issues and that he took prescription medications that affected his cognitive functions. The trial court summarily dismissed the petition, and defendant

appealed. In March 2021, the Second District reversed and remanded for second-stage proceedings. *Hart*, 2021 IL App (2d) 180845-U, ¶¶ 21-24.

¶ 10 On remand, the trial court appointed postconviction counsel, who filed an amended petition in October 2022. The amended petition alleged trial counsel rendered ineffective assistance by (1) failing to investigate two items of potentially exonerating evidence, namely, the surveillance video from the gas station and a fingerprint analysis of the gun; (2) avoiding going to trial, despite defendant's demand for a jury trial; (3) inaccurately describing the terms of the plea agreement to defendant; (4) refusing to withdraw defendant's guilty plea on the day of the plea hearing; and (5) failing to advise defendant of his right to request a fitness hearing, the possibility of being found not guilty by reason of insanity, or being found guilty but mentally ill. The amended petition, which was purportedly signed by defendant and notarized by his attorney, stated, "[Defendant] confirmed that he is the signatory above by telephone." The amended petition did not indicate it incorporated the *pro se* petition. No separate affidavits or exhibits were attached to the amended petition. Counsel also filed a Rule 651(c) certificate.

¶ 11 In February 2023, the State filed a motion to dismiss the amended petition. The State argued defendant (1) failed to attach any affidavits or supporting evidence to the amended petition or explain the absence of such attachments, (2) failed to argue how he was prejudiced by his counsel's performance, and (3) generally supported his claims with vague and conclusory language.

¶ 12 In April 2023, counsel was given leave to attach exhibits and affidavits to the amended petition. In May 2023, counsel filed a motion for discovery, seeking "all evidence related to the assertions made in the post-conviction petition and amended post-conviction

petition filed by defendant.” In December 2023, counsel filed a response to the State’s motion to dismiss. Citing section 1-109 of the Code of Civil Procedure (Code) (735 ILCS 5/1-109 (West 2022)), counsel asserted “the verified petition serves as its own affidavit. The original Petition included an affidavit.” Counsel maintained that the four plea-related claims alleged in the amended petition established a constitutional violation “on [their] face.” However, counsel admitted he had not located the surveillance video or the fingerprint analysis referenced in the amended petition. Finally, counsel stated he had obtained defendant’s “[f]ull medical reports,” which he would offer into evidence if the petition advanced to a third-stage evidentiary hearing. A synopsis of defendant’s medical records was attached to the response.

¶ 13 In March 2024, the matter proceeded to a second-stage hearing. During counsel’s argument, he informed the trial court the amount of discovery was “immense” and included 17 DVDs of surveillance video from the gas station and a voluminous paper record. Counsel told the court, “I’m not sure I got to the end of everything.” According to counsel, because he did not finish reviewing the surveillance video, he could not say whether there was any exculpatory evidence in the video. Counsel also could not say whether the fingerprint analysis of the gun existed.

¶ 14 In May 2024, the trial court entered a written order dismissing the amended petition.

¶ 15 This appeal followed.

¶ 16 II. ANALYSIS

¶ 17 On appeal, defendant argues we must remand for further second-stage proceedings because postconviction counsel failed to comply with Rule 651(c). The State concedes the matter must be remanded for compliance with the rule. We accept the State’s

concession.

¶ 18 A defendant is entitled to a “reasonable” level of assistance of counsel during second-stage postconviction proceedings. *People v. Beasley*, 2017 IL App (4th) 150291, ¶ 38. To ensure this level of assistance, Rule 651(c) requires postconviction counsel to file a certificate indicating he has (1) “consulted with petitioner by phone, mail, electronic means or in person to ascertain his or her contentions of deprivation of constitutional rights,” (2) “examined the record of the proceedings,” and (3) “made any amendment to the petitions filed *pro se* that are necessary for an adequate presentation of petitioner’s contentions.” Ill. S. Ct. R. 651(c) (eff. July 1, 2017). Whether postconviction counsel complied with Rule 651(c) is reviewed *de novo*. *People v. Blanchard*, 2015 IL App (1st) 132281, ¶ 15.

¶ 19 “ ‘The filing of a facially valid Rule 651(c) certificate creates a rebuttable presumption that counsel acted reasonably and complied with the rule.’ ” *Beasley*, 2017 IL App (4th) 150291, ¶ 30 (quoting *People v. Wallace*, 2016 IL App (1st) 142758, ¶ 25). If postconviction counsel fails to comply with the duties mandated by Rule 651(c), remand is required regardless of the merits of the defendant’s claims. *People v. Suarez*, 224 Ill. 2d 37, 47 (2007). In this case, counsel filed a Rule 651(c) certificate. Thus, we presume defendant received a reasonable level of assistance unless he demonstrates his attorney failed to substantially comply with Rule 651(c). See *People v. Addison*, 2023 IL 127119, ¶ 21.

¶ 20 Here, the record rebuts the presumption that postconviction counsel reviewed the record of the proceedings. At the second-stage hearing, counsel explicitly stated he did not finish reviewing the record. Because he did not finish watching the surveillance video from the gas station, he could not say with certainty whether the video contained any exculpatory evidence. Counsel also admitted he did not know if the record contained a fingerprint analysis of the gun

found in defendant's home.

¶ 21 The record also rebuts the presumption that postconviction counsel made the necessary amendments for an adequate presentation of defendant's contentions. First, the amended petition alleged several claims of ineffective assistance of counsel but failed to allege how defendant was prejudiced by trial counsel's performance. When alleging a claim of ineffective assistance, a defendant must demonstrate (1) counsel's performance was deficient and (2) he was prejudiced by counsel's deficient performance. *People v. Bradford*, 2019 IL App (4th) 170148, ¶ 14; *Strickland v. Washington*, 466 U.S. 668, 686 (1984). To establish prejudice in the plea context, 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." (Internal quotation marks omitted.) *People v. Watkins*, 2019 IL App (4th) 180605, ¶ 31. At the second stage, the defendant bears the burden of making a substantial showing of a constitutional violation. *People v. Domagala*, 2013 IL 113688, ¶ 35.

¶ 22 In its motion to dismiss, the State pointed out that defendant failed to argue how he was prejudiced. After being granted leave to amend the postconviction petition by attaching affidavits or exhibits, counsel instead filed a response to the State's motion, which again failed to allege how defendant was prejudiced. As to the four plea-related claims, the response insisted each of the claims established "a Constitutional violation on its face," with no further explanation as to prejudice. As to the claim trial counsel was ineffective for failing to request a fitness hearing, the response simply alleged a broad conclusory statement that a fitness hearing "held the distinct possibility of altering the outcome of the case." Ultimately, neither the amended petition nor the response to the State's motion alleged that, but for counsel's errors, defendant would not have pleaded guilty and would have instead insisted on going to trial.

¶ 23 Second, counsel failed to attach any affidavits, records, or other evidence to the amended petition, nor did he offer an explanation for their absence. Under the Act, “[t]he petition shall have attached thereto affidavits, records, or other evidence supporting its allegations or shall state why the same are not attached.” 725 ILCS 5/122-2 (West 2022). Further, the record establishes that counsel erroneously believed defendant’s purported verification pursuant to section 1-109 of the Code (735 ILCS 5/1-109 (West 2022)) was sufficient to support the allegations in the amended petition, based on counsel’s misstatement of the Act’s affidavit requirements (725 ILCS 5/122-2 (West 2022)) in his response to the State’s motion to dismiss. See 5 ILCS 312/6A-103 (West 2022) (stating the requirements for electronic notarization). Indeed, he argued defendant was not required to attach any affidavits because a verified petition had “the same effect as an affidavit or sworn testimony in Court.”

¶ 24 Counsel’s reference to defendant’s notarized affidavit that was attached to the *pro se* petition also did not cure this error, as the amended petition did not incorporate the original *pro se* petition. See *People v. Snow*, 2012 IL App (4th) 110415, ¶ 55 (holding when an amended postconviction petition does not incorporate the *pro se* petition, the amended petition supersedes the *pro se* petition). It also appears from the record that counsel obtained a copy of defendant’s medical records, but he did not attach those records to the amended petition.

¶ 25 Counsel’s failure to comply with the second and third requirements of Rule 651(c) requires us to remand this matter to the trial court for further second-stage proceedings. On remand, we “direct the trial court to provide defendant new postconviction counsel who shall have leave to amend and to add supporting documentation, as counsel deems necessary, in support of defendant’s claims.” *People v. Burns*, 2019 IL App (4th) 170018, ¶ 3.

¶ 26

III. CONCLUSION

¶ 27 For the reasons stated, we reverse the trial court's judgment and remand for further proceedings consistent with this decision.

¶ 28 Reversed and remanded.