

FIRST DISTRICT,
SIXTH DIVISION
September 26, 2025

No. 1-24-0508

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).

IN THE
APPELLATE COURT OF ILLINOIS
FIRST JUDICIAL DISTRICT

THE PEOPLE OF THE STATE OF ILLINOIS,)	Appeal from the
)	Circuit Court of
Plaintiff-Appellee,)	Cook County
)	
v.)	No. 03 CR 11873
)	
KENNETH BOULDIN,)	Honorable
)	James B. Novy,
Defendant-Appellant.)	Judge Presiding.

JUSTICE GAMRATH delivered the judgment of the court.
Presiding Justice C.A. Walker and Justice Pucinski concurred in the judgment.

ORDER

¶ 1 *Held:* We affirm the circuit court's second-stage dismissal of defendant's postconviction petition over defendant's contention that postconviction counsel performed unreasonably by failing to attach adequate evidentiary support to the supplemental postconviction petition.

¶ 2 Defendant Kenneth Bouldin appeals from the second-stage dismissal of his postconviction petition filed pursuant to the Post-Conviction Hearing Act (Act) (725 ILCS 5/122-1 *et seq.* (West 2022)). On appeal, Bouldin argues his posttrial counsel was unreasonable for failing to attach certain evidentiary support to the claim of ineffective assistance of trial counsel that was advanced in the supplemental postconviction petition. We affirm.

¶ 3

I. BACKGROUND

¶ 4

Following a bench trial, Bouldin was convicted of criminal sexual assault, aggravated criminal sexual abuse, and criminal sexual abuse, and sentenced to an aggregate term of 60 years' imprisonment. We affirmed Bouldin's convictions and sentence on appeal in an unpublished order. *People v. Bouldin*, No. 1-06-3727 (May 20, 2009). On October 28, 2010, Bouldin filed a *pro se* petition for postconviction relief under the Act, alleging trial counsel was ineffective for failing to impeach the victim U.L. with a pending juvenile case against her. The circuit court appointed postconviction counsel who filed a certificate pursuant to Illinois Supreme Court Rule 651(c) and a supplemental postconviction petition on October 25, 2022. On February 29, 2024, the circuit court granted the State's motion to dismiss Bouldin's postconviction petition.

¶ 5

The evidence at trial established that on March 25, 2003, thirteen-year-old U.L. and her friend, S.H., were outside their school around 9:00 a.m. before class. Bouldin, who was dating S.H.'s mother at the time, approached them in his car and asked if S.H. would braid his hair. U.L. and S.H. got into his car and went to Bouldin's apartment. The three watched television in a room and, at some point, U.L. went to the bathroom. As U.L. left the bathroom, Bouldin locked the door to the room where S.H. was still watching television. Bouldin grabbed U.L. by the arm and forced her into a bedroom. Bouldin pushed her onto the bed, grabbed her neck, kissed her, rubbed her breasts, and put his finger in her vagina. Bouldin removed U.L.'s pants and vaginally penetrated her with his penis. When Bouldin stopped, U.L. went to the bathroom to urinate and saw blood and "white stuff" when she wiped.

¶ 6

When U.L. got home, she told her mother what happened. U.L.'s mother immediately took her to St. Elizabeth's Hospital where the police were called. U.L. was examined by a physician and nurse who noted U.L. had vaginal bleeding but no observable marks or bruises. The nurse prepared a sexual assault kit with a vaginal swab and swab of U.L.'s breasts. The parties stipulated

that analysis from the Illinois State Police Crime lab found semen on the vaginal swab and saliva on the chest swab. Analysis determined that Bouldin could not be excluded as the identified DNA profiles from either swab. The next day, U.L. was admitted to St. Mary's Hospital to be treated for depression and identified Bouldin in a photo array while at the hospital.

¶ 7 The State introduced as evidence of other crimes two prior sexual offense convictions, one in 1996 and one in 1997, to show Bouldin's propensity to commit sexual offenses pursuant to 725 ILCS 5/115-7.3 (West 2002). The two incidents involved girls who were sexually assaulted by Bouldin at ages thirteen and fifteen.

¶ 8 Bouldin testified on his own behalf. He denied having sex with U.L. or locking S.H. in the television room.

¶ 9 The circuit court found Bouldin guilty of six counts of criminal sexual assault, one count of aggravated criminal sexual abuse, and one count of criminal sexual abuse, and sentenced him to two consecutive terms of 30 years' imprisonment. On direct appeal, we affirmed Bouldin's convictions and sentence over his argument that the trial court improperly admitted his 1997 criminal sexual assault conviction as evidence of other crimes to show his propensity to commit sex offenses. *Bouldin*, No. 1-06-3727 (May 20, 2009).

¶ 10 On October 28, 2010, Bouldin filed a *pro se* postconviction petition. Among other issues, the petition raises a claim that his trial counsel was ineffective for failing to impeach U.L. with "pending charges" against her at trial. The petition did not identify the alleged "pending charges."

¶ 11 Assistant Public Defender (APD) William Barron appeared to represent Bouldin and filed a Rule 651(c) certificate and a supplemental postconviction petition on October 25, 2022. The petition expanded on Bouldin's claim, asserting: "Trial counsel informed Mr. Bouldin that he was aware that U.L. had a juvenile delinquency matter pending against her at the time of Mr. Bouldin's trial" and he "received ineffective assistance of counsel when, despite this knowledge, trial counsel

did not impeach U.L.’s credibility as a witness.” Counsel attached an affidavit from Bouldin making the same assertion and included a claim that appellate counsel was ineffective for failing to raise the issue on direct appeal.

¶ 12 On December 15, 2023, the State filed a motion to dismiss Bouldin’s postconviction petition. After a hearing on February 29, 2024, the court granted the State’s motion to dismiss.

¶ 13 II. ANALYSIS

¶ 14 On appeal, Bouldin argues postconviction counsel was unreasonable because, although counsel amended Bouldin’s claim by adding legal and factual support, counsel failed to attach evidentiary support showing that U.L. had a pending juvenile case at the time of trial and failed to impeach her with it.

¶ 15 The Act provides a means by which those under criminal sentence in this state can assert that their convictions were the result of a substantial denial of their federal or state constitutional rights. 725 ILCS 5/122-1(a) (West 2020); *People v. Pendleton*, 223 Ill. 2d 458, 471 (2006). A postconviction proceeding contains distinct stages. *People v. Hodges*, 234 Ill. 2d 1, 10 (2009). At the first stage, the circuit court may dismiss a petition if it determines the petition is frivolous or patently without merit. *Id.* If not dismissed at the first stage, the petition advances to the second stage. *Id.* At the second stage of proceedings, all well-pleaded facts that are not positively rebutted by the trial record are to be taken as true, and where, as here, the circuit court dismisses the petition at that stage, we generally review the circuit court’s decision using a *de novo* standard. *Pendleton*, 223 Ill. 2d at 473.

¶ 16 There is no constitutional right to counsel in proceedings under the Act, so a defendant is entitled only to reasonable assistance from appointed postconviction counsel. *People v. Greer*, 212 Ill. 2d 192, 204 (2004). To ensure the reasonable assistance of counsel, Rule 651(c) imposes three duties on postconviction counsel. *People v. Perkins*, 229 Ill. 2d 34, 42 (2007). Counsel must

certify, or the record must show, that counsel (1) consulted with petitioner by phone, mail, electronic means, or in person to ascertain his or her contentions of constitutional deprivation; (2) examined the record of the trial proceedings; and (3) made any amendments to the petitions filed *pro se* that are necessary to adequately present petitioner's contentions. Ill. S. Ct. R. 651(c) (eff. July 1, 2017).

¶ 17 Where, as here, postconviction counsel files a certificate attesting they fulfilled the duties of Rule 651(c), we presume the defendant received reasonable assistance. See *People v. Custer*, 2019 IL 123339, ¶ 32. This presumption controls unless the defendant rebuts it. *Id.* We review postconviction counsel's compliance with Rule 651(c) *de novo*. *People v. Profit*, 2012 IL App (1st) 101307, ¶ 17.

¶ 18 The record in this case does not rebut the presumption that postconviction counsel provided reasonable assistance of counsel. In Bouldin's original *pro se* petition, he claimed trial counsel was ineffective where he failed to investigate or request criminal background checks on witnesses and present evidence that the victim U.L. had "pending charges during the process." Counsel reshaped this claim in the supplemental postconviction petition, asserting: "Trial counsel informed Mr. Bouldin that he was aware that U.L. had a juvenile delinquency matter pending against her at the time of Mr. Bouldin's trial" and Bouldin "received ineffective assistance of counsel when, despite this knowledge, trial counsel did not impeach U.L.'s credibility as a witness." In support of this claim, counsel provided citations to case law, applied the law to the specific facts of Bouldin's case, and presented a coherent (albeit unsuccessful) argument on Bouldin's behalf. In addition, counsel attached an affidavit from Bouldin in which he averred: "My attorney told me that he was aware that, at the time she testified against me, [U.L.] had a pending juvenile case against her. My attorney did not use this information to impeach her credibility as a witness." The record supports the presumption that postconviction counsel complied with Rule 651(c) and

provided reasonable assistance.

¶ 19 To rebut this presumption, Bouldin argues postconviction counsel was ineffective for failing to attach “evidentiary support showing that U.L. actually had a pending case at the time of Bouldin’s trial.” We disagree. At second stage proceedings, all well-pleaded facts that are not positively rebutted in the record are taken as true. *Pendleton*, 223 Ill. 2d at 473. Thus, in the face of Bouldin’s un rebutted affidavit, the court would have accepted as true Bouldin’s allegation that U.L. had a case pending. The failure of counsel to provide the court with corroborating proof was not unreasonable.

¶ 20 Nor was counsel’s supposed failure to impeach U.L. at trial with her pending juvenile case. In making this argument, Bouldin presupposes that U.L.’s pending case was relevant and would have impugned her credibility at trial. However, Bouldin does not tell us the nature of the pending juvenile case or how it was resolved. We cannot simply assume there were relevant facts counsel could have used to impeach U.L. with and we will not speculate as to counsel’s performance based on some unidentified suppositional evidence. As our supreme court has stated, postconviction counsel does not perform unreasonably “simply because his arguments were without merit [citation] or because he was unable to make the petition’s allegations factually sufficient to require the granting of relief [citation].” *People v. Williams*, 2025 IL 129718, ¶ 46. There is a distinction between postconviction petitions that fail due to counsel’s performance and those that fail simply due to the petition’s lack of merit. *Id.* We find the postconviction petition in this case falls into the latter category.

¶ 21 Bouldin relies on *People v. Addison*, 2023 IL 127119, and *People v. Wise*, 2024 IL App (2d) 191139, in which the reviewing courts found postconviction counsel was unreasonable in failing to adequately shape the defendants’ claims, but those cases are distinguishable.

¶ 22 In *Addison*, the court held postconviction counsel failed to provide reasonable assistance

where counsel found certain claims that could have been raised on direct appeal were worth pursuing but omitted an ineffective assistance of appellate counsel claim from the amended petition. *Addison*, 2023 IL 127119, ¶¶ 7, 25. “Worse than that, she *eliminated* the necessary allegations that defendant had included in the *pro se* petition.” (Emphasis in original). *Id.* ¶ 25. In contrast, Bouldin’s postconviction counsel added and enhanced the necessary legal and factual allegations of his *pro se* petition and included a claim of ineffective assistance of appellate counsel to preserve the issue and ensure it was in the proper form to present to the court.

¶ 23 In *Wise*, postconviction counsel failed to provide reasonable assistance where counsel filed an amended petition that was “woefully incomplete,” dismissed due to “incompleteness,” and “failed to allege the basic elements of the claims it raised,” leaving nothing for the court to take as true at the second stage proceedings. *Wise*, 2024 IL App (2d) 191139, ¶¶ 19-20. Conversely, Bouldin’s supplemental petition is in appropriate legal form and alleges the basic elements of his claim, namely, that U.L. had a pending juvenile matter at the time of trial and trial counsel was ineffective for failing to impeach her with this information. This is sufficient to show reasonable assistance of counsel under the facts of this case.

¶ 24 III. CONCLUSION

¶ 25 For the reasons stated, we affirm the judgment of the circuit court of Cook County.

¶ 26 Affirmed.