

2025 IL App (1st) 240332-U

No. 1-24-0332

Fifth Division
September 26, 2025

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 DISTRICT

THE PEOPLE OF THE STATE OF ILLINOIS,)	Appeal from the
)	Circuit Court of
Plaintiff-Appellee,)	Cook County.
)	
v.)	No. 12 C 22019501
)	
JUAN TORRES,)	Honorable
)	Anjana Hansen,
Defendant-Appellant.)	Judge, Presiding.

JUSTICE TAILOR delivered the judgment of the court.
Presiding Justice Mitchell and Justice Oden Johnson concurred in the judgment.

ORDER

- ¶ 1 *Held:* The circuit court's order granting the State's motion to dismiss defendant's postconviction petition is affirmed where postconviction counsel provided reasonable assistance as contemplated by the Post-Conviction Hearing Act (725 ILCS 5/122-1 *et seq.* (West 2018)).
- ¶ 2 Defendant Darius Bailey appeals from the second-stage dismissal of his successive petition for relief filed pursuant to the Post-Conviction Hearing Act (Act) (725 ILCS 5/122-1 *et seq.* (West 2018)). On appeal, Bailey contends that he received unreasonable assistance of postconviction

counsel because counsel's supplemental petition did not attempt to address fatal deficiencies in his *pro se* petition and, when the State highlighted those deficiencies in its motion to dismiss, counsel did not amend the supplemental petition. For the reasons that follow, we affirm the judgment of the circuit court.

¶ 3

BACKGROUND

¶ 4 Torres was indicted for two counts of aggravated sexual assault, three counts of home invasion, two counts of criminal sexual assault, two counts of residential burglary, three counts of aggravated battery, and one count of criminal trespass to residence. On October 5, 2012, after a Rule 402 plea bargain conference, the court conducted a hearing during which Torres, who used a Spanish/English interpreter, entered a guilty plea to two counts of aggravated criminal sexual assault. He was sentenced to two consecutive 20-year terms of imprisonment. The remaining counts were dismissed.

¶ 5 If the case had proceeded to trial, the State would have presented evidence that on March 28, 2010, at approximately 1 a.m., Torres entered the first-floor bedroom of 88-year-old J.D. through a window at the Asbury Court Retirement Home in Des Plaines, Illinois. He pulled down the victim's undergarments and engaged in vaginal and anal intercourse with her by force. The victim did not consent to Torres entering her apartment or to any sexual contact. The fingerprints recovered from the scene matched Torres's fingerprints. In addition, Torres gave a statement to police admitting to committing the offense. Torres stipulated to those facts.

¶ 6 The court made findings on the record that Torres knew of the charges and possible sentences, that he was waiving his right to a jury trial, that he had not been threatened or coerced to plead guilty, and that this plea could have immigration consequences. The court then accepted

the plea and notified Torres he had 30 days in which to file a motion to vacate his plea.

¶ 7 More than seven years later, on January 15, 2020, Torres filed a *pro se* postconviction petition to vacate his conviction, arguing that plea counsel was ineffective for failing to advise him of the 30-day period in which to withdraw his plea of guilty, that his sentence for one of his convictions should be vacated under the one-act, one-crime rule, that the State manipulated him and his plea counsel into him pleading guilty based on his inability to comprehend English, and that his sentence should be lowered. The court advanced Torres's petition to the second stage and appointed Assistant Public Defender (APD) Tiffin Prince-Horton to represent him.

¶ 8 On January 10, 2022, APD Prince-Horton filed an amended certificate pursuant to Illinois Supreme Court Rule 651(c) in which she stated she had conferred with Torres through a Spanish interpreter and familiarized herself with the case, and that Torres adequately set forth his claims in the *pro se* petition. The State filed a motion to dismiss the petition on September 25, 2023, arguing that Torres had forfeited his right to file a postconviction petition as he had not filed within three years as required by section 122-1(c) of the Act (725 ILCS 5/122-1(c) (West 2022)) or asserted he lacked culpable negligence for failing to timely file. The State also argued that Torres did not argue that his plea was involuntary and the record showed that he had been properly admonished of the consequences of his plea. Furthermore, the State argued that his claim regarding the one-act, one crime doctrine was meritless and procedurally barred.

¶ 9 The court heard arguments on the petition and the State's motion to dismiss on January 26, 2024. The State argued the points in their motion. APD Price-Horton recounted the efforts she undertook after she was appointed to represent Torres for second-stage postconviction proceedings, including reviewing the court file, reviewing the statute, subpoenaing police records,

reading the transcripts, and speaking with the Spanish interpreter. APD Price-Horton noted that Torres had told her that “the translator did not properly translate what he was saying in court.” APD Price-Horton further stated that when she spoke with the interpreter, the interpreter indicated that she correctly translated the court proceeding as she was “mandated to do.” APD Price-Horton further stated that she did not amend Torres’s *pro se* petition because she believed it “correctly stated his due process violations.” In rebuttal, the State argued that Torres was clearly admonished at the plea hearing and stated he understood, rebutting his claim.

¶ 10 The court granted the State’s motion to dismiss. The court stated that it had reviewed the transcripts of the plea hearing, which reflected Torres was asked “several times throughout the plea whether or not he understood.” Torres responded “each and every time” that he understood the proceedings. Based on the transcripts, the court found Torres’s claims about improper admonishments, lack of understanding, and mistranslation were rebutted by the record. Further, the court stated that Torres’s petition was untimely, and he did not state any constitutional claims.

¶ 11 This appeal followed.

¶ 12 ANALYSIS

¶ 13 Torres argues that he received unreasonable assistance of postconviction counsel when she failed to raise meritorious claims and by not adequately consulting with him or amending his petition. Specifically, Torres argues that postconviction counsel failed to amend his *pro se* petition to shape his claims to respond to the State’s claims of procedural default or to include the new claim raised at the hearing on the State’s motion to dismiss that the Spanish interpreter misinterpreted for Torres. The State argues that postconviction counsel filed a facially compliant

Rule 651(c) certificate and Torres failed to rebut the presumption that counsel provided reasonable assistance.

¶ 14 At the second stage of postconviction proceedings, appointment of counsel is a statutory, rather than constitutional, right. 725 ILCS 5/122-4 (West 2018); *People v. Suarez*, 224 Ill. 2d 37, 42 (2007). Under the Act, petitioners are entitled to a “reasonable” level of assistance of counsel. *People v. Addison*, 2023 IL 127119, ¶ 19. To ensure this level of assistance, Rule 651(c) imposes three duties on appointed postconviction counsel. *Id.* ¶ 20. Either the record or a certificate filed by the attorney must show that counsel (1) consulted with the petitioner to ascertain his contentions of constitutional deprivations, (2) examined the record of the trial proceedings, and (3) made any amendments to the filed *pro se* petition necessary to adequately present the petitioner’s contentions. Ill. S. Ct. R. 651(c) (eff. July 1, 2017); *Addison*, 2023 IL 127119, ¶ 20.

¶ 15 The filing of a Rule 651(c) certificate creates a rebuttable presumption that postconviction counsel provided reasonable assistance, and substantial compliance with the rule is sufficient. *People v. Profit*, 2012 IL App (1st) 101307, ¶ 19. A defendant bears the burden of overcoming the presumption of reasonable assistance by demonstrating his attorney’s failure to substantially comply with the duties mandated by Rule 651(c). *Id.* Our review of an attorney’s compliance with Rule 651(c) and of the dismissal of a postconviction petition without an evidentiary hearing is *de novo*. *Id.* ¶ 17.

¶ 16 Here, postconviction counsel filed a Rule 651(c) certificate. Therefore, the presumption exists that Torres received reasonable assistance of postconviction counsel. *People v. Hayes*, 2016 IL App (3d) 130769, ¶ 12. Torres acknowledges that counsel filed a Rule 651(c) certificate but argues that postconviction counsel’s deficiencies rebut this presumption.

¶ 17 Torres argues that postconviction counsel provided unreasonable assistance where she failed to amend his *pro se* petition to allege (a) that he lacked culpable negligence in filing his postconviction petition late, (b) the “new claim” she raised at oral argument that the interpreter did not properly translate what he was saying in court, and (c) that by pleading guilty he did not waive his claims.

¶ 18 The Act states that if a defendant does not file a direct appeal, “the postconviction petition shall be filed no later than 3 years from the date of conviction, unless the petition alleges facts showing that the delay was not due to his culpable negligence.” 725 ILCS 5/122-1(c) (West 2022). If a petitioner does not file his or her postconviction petition within the limitations period, the Act requires the petitioner to allege facts demonstrating that the delay was not due to his or her culpable negligence. *People v. Perkins*, 229 Ill. 2d 34, 43 (2007). A defendant has the burden of establishing that the delay was not due to his culpable negligence. *People v. Mitchell*, 296 Ill. App. 3d 930, 933 (1998). If such allegations are absent, the trial court must dismiss, upon the State’s motion, the petition as untimely at the second stage. *Id.*

¶ 19 “Rule 651(c) requires counsel to amend an untimely *pro se* petition to allege any *available* facts necessary to establish that the delay was not due to the petitioner’s culpable negligence.” (Emphasis added). *Id.* at 49. To comply with this duty, “counsel must inquire of the petitioner whether there is any excuse for the delay in filing. As a practical matter, any potential excuse for the late filing will often be discovered by speaking with the petitioner.” *Id.* at 50. In addition, “[c]ounsel must also allege any excuse for the delay in filing apparent from the pleadings and the portions of the record counsel must review to present petitioner’s claims.” *Id.*

¶ 20 Torres entered his guilty plea on October 5, 2012. His *pro se* petition was filed on January

15, 2020, over seven years later. Torres did not allege that he lacked culpable negligence in filing his untimely *pro se* petition. In its motion to dismiss, the State argued that Torres's petition was time barred and that he failed to allege any facts to show that he lacked culpable negligence in filing late.

¶ 21 We find that Torres has failed to overcome the presumption of reasonable assistance created by counsel's Rule 651(c) certificate. The record reflects that counsel consulted with Torres with an interpreter present, reviewed the record, and investigated his claims. While counsel is required to amend a postconviction petition to allege a lack of culpable negligence for filing an untimely petition if such facts exist (*Perkins*, 229 Ill. 2d at 49), there is no indication that any such facts were available here and "[w]e cannot assume there was some excuse counsel failed to raise for the delay in filing." *Id.* at 51. Torres's *pro se* petition did not allege any lack of culpable negligence. Nor does the record does not contain any facts that would have excused the late filing of his petition. Nor does Torres identify any such facts on appeal. See *People v. Cotto*, 2016 IL 119006, ¶ 50 (postconviction counsel did not provide unreasonable assistance where defendant failed to explain what additional information should have been included by counsel in regard to the timeliness issue). This court will not find unreasonable assistance of postconviction counsel based on a failure to make unspecified arguments. See *People v. Profit*, 2012 IL App (1st) 101307, ¶¶ 28, 29 (finding postconviction counsel did not provide reasonable assistance where the defendant failed to identify what arguments postconviction counsel could have made in response); *People v. Bernabe*, 2022 IL App (1st) 182475-U, ¶¶ 19, 23 (finding that the defendant had not rebutted the presumption of reasonable assistance where he argued generally that counsel should have amended the petition to address procedural barriers but did not advance any theories as to the

specific amendments counsel should have made). Where Torres, with the assistance of able appellate counsel in this court, has not suggested how postconviction counsel could have amended his petition to survive the State's motion to dismiss on untimeliness grounds, we cannot find that postconviction counsel acted unreasonably in failing to make these unspecified amendments. See *Profit*, 2012 IL App (1st) 101307, ¶¶ 28-29.

¶ 22 Torres's reliance on *People v. Carson*, 2024 IL App (1st) 221644 is misplaced. There, the appellate court reversed and remanded where the record failed to establish whether postconviction counsel fulfilled the Rule 651(c) duties, particularly the obligation under *Perkins*, to amend a facially untimely petition to include any available facts supporting a lack of culpable negligence. *Id.* ¶ 25. The *Carson* court explained that (1) postconviction counsel had failed to incorporate into the petition potentially relevant facts from earlier section 2-1401 proceeding, (2) counsel misstated the timeline concerning when the petitioner discovered the basis for his claim, and (3) the record was wholly silent as to what actions counsel took to investigate possible justifications for the late filing. *Id.* at ¶¶ 18-24. Given these deficiencies, the court found remand was necessary regardless of the petition's substantive merit to ensure compliance with Rule 651(c). In contrast, the record here contains no comparable omissions or ambiguities. Postconviction counsel filed a valid Rule 651(c) certificate, thereby creating a rebuttable presumption of reasonable assistance. Unlike *Carson*, nothing in the record undermines that presumption. Counsel here was not faced with prior litigation containing potentially exculpatory timeline information, nor did counsel operate under a misapprehension about the petition's timeliness. More critically, Torres has never identified, before the trial court or on appeal, any factual basis for asserting a lack of culpable negligence. In the absence of such facts, postconviction counsel had no obligation to amend the petition to make

an unsupported claim.

¶ 23 Alternatively, Torres argues that if postconviction counsel discovered that there were no facts to excuse the late filing of his petition, postconviction counsel should have moved to withdraw. In *People v. Huff*, 2024 IL 128492, ¶ 29, the defendant’s petition had reached the second stage by default, that is, without the court’s determination that the merits of the petition warranted second stage review. Our supreme court granted leave to appeal to decide whether postconviction counsel can permissibly choose to stand on a petition known to be frivolous, but the court did not reach that question. Instead, it found that the record contained no indication that postconviction counsel knew or believed that the petitioner’s claim was frivolous or patently without merit, which meant that counsel did not have an obligation to withdraw. *Id.* ¶ 30.

¶ 24 *Huff* is dispositive of this claim. Here, the circuit court found arguable merit to Torres’s petition and advanced the petition to the second stage. Postconviction counsel was entitled to rely on the court’s determination that Torres’s petition was not frivolous or patently without merit. See *People v. Kuehner*, 2015 IL 117695, ¶ 20 (when the court advances a petition to the second stage there is “an affirmative determination that, on its face, the petition was neither frivolous or patently without merit” and postconviction counsel is entitled to rely on that finding). Therefore, because postconviction had no reason to believe that Torres’s petition was frivolous or patently without merit, under *Huff*, 2024 IL 128492, ¶ 29-30, counsel had no duty to withdraw. That, combined with Torres’s failure to identify any basis to excuse the untimeliness of this petition, establishes that Torres did not rebut the presumption that counsel provided reasonable assistance. *Id.*

¶ 25 Parenthetically, we also note that the court did not dismiss Torres’s petition based on timeliness alone. Rather, the court found that Torres’s claim that he did not understand the plea

proceedings to be rebutted by the record. The court noted that the record showed that Torres was properly admonished and repeatedly confirmed his understanding of the proceedings through the interpreter. Torres never expressed any confusion. Nor has Torres even identified any aspect of his plea hearing that he did not understand or any aspect of what he said that was not correctly translated. The court further found that his other claims lacked the constitutional basis necessary to be considered in a post-conviction petition. See *Cotto*, 2016 IL 119006, ¶ 50 (rejecting the defendant's argument that postconviction counsel provided unreasonable assistance where the trial court reviewed the defendant's claims in his untimely petition on their merits).

¶ 26 Nevertheless, because the trial court properly dismissed defendant's postconviction petition as untimely, we need not reach the merits of Torres's other claims. See *Perkins*, 229 Ill. 2d at 41 ("Under the Act, a petitioner's claims cannot be presented if they are untimely and the petitioner has not alleged facts showing the delay in filing was not due to his culpable negligence").

¶ 27 CONCLUSION

¶ 28 For the reasons explained above, we affirm the judgment of the circuit court.

¶ 29 Affirmed.