

2026 IL App (4th) 240716

NO. 4-24-0716

IN THE APPELLATE COURT

OF ILLINOIS

FOURTH DISTRICT

FILED

February 17, 2026
Carla Bender
4th District Appellate
Court, IL

THE PEOPLE OF THE STATE OF ILLINOIS,)	Appeal from the
Plaintiff-Appellee,)	Circuit Court of
v.)	Sangamon County.
JEFFREY D. HUDDLESTON,)	
Defendant-Appellant.)	No. 22CF171
)	
)	Honorable
)	Jennifer M. Ascher,
)	Judge Presiding.

JUSTICE DeARMOND delivered the judgment of the court, with opinion.
Justice Steigmann concurred in the judgment and opinion.
Justice Doherty dissented, with opinion.

OPINION

¶ 1 Defendant, Jeffrey D. Huddleston, appeals the second stage dismissal of his postconviction petition under the Post-Conviction Hearing Act (Act) (725 ILCS 5/122-1 *et seq.* (West 2022)). He argues postconviction counsel provided unreasonable assistance in failing to properly advance his *pro se* claims of error. For the following reasons, we affirm.

¶ 2 I. BACKGROUND

¶ 3 In March 2022, the State charged defendant in a five-count information with being an armed habitual criminal (AHC) (720 ILCS 5/24-1.7(a) (West 2022)), unlawful possession of a weapon by a felon (*id.* § 24-1.1(a)), aggravated unlawful use of a weapon (*id.* § 24-1.6(a)), aggravated battery (*id.* § 12-3.05(c)), and possession of a weapon without a Firearm

Owners Identification card (430 ILCS 65/2(a)(1) (West 2022)). The offense of being an AHC is a Class X felony with a sentencing range of 6-to-30 years' imprisonment or, if eligible, an extended term sentencing range of 30-to-60 years' imprisonment. 730 ILCS 5/5-4.5-25 (West 2022).

¶ 4 At defendant's first appearance on February 24, 2022, the trial court advised him the AHC charge carried a sentencing range of 6-to-30 years' imprisonment, at 85%, with a three-year term of mandatory supervised release. At the bond reduction hearing on March 1, 2022, reference was made to a 6-to-60 year extended term sentence. At the preliminary hearing on March 3, 2022, the State reiterated the AHC charge carried a 6-to-30-year sentencing range, to be served at 85%, and was not eligible for probation. At a second bond reduction hearing on March 25, 2022, an assistant state's attorney unfamiliar with the case informed the court that defendant was subject to a 6-to-60 year sentencing range, to be served at 85%. At the next pretrial hearing on April 25, 2022, defendant sought and obtained a date for a conference pursuant to Illinois Supreme Court Rule 402 (eff. July 1, 2012) to discuss a possible plea.

¶ 5 On May 13, 2022, the trial court conducted a Rule 402 conference. During their initial conversation, the court explained the process and obtained defendant's consent to proceed. The State first said the AHC charge carried an extended sentencing range of 6-to-60 years, but it then explained why it could not pursue an extended-term sentence, limiting defendant's exposure to 6-to-30 years.

¶ 6 The State then went on to discuss the circumstances of the offenses charged. According to the State, a dispute over a snowblower, recorded on surveillance video and witnessed by a police officer, escalated into defendant pointing a loaded gun at another man and unsuccessfully attempting to shoot him at point blank range. Defendant's criminal history

included convictions for manufacture and delivery of controlled substances in 1988, theft and possession of controlled substances in 2000, forgery in 2002, aggravated battery in 2005, thefts and unlawful possession of controlled substances in 2007, keeping a place of prostitution in 2009, and culminated in his most recent conviction in 2013 for involuntary sexual servitude of a minor in 2015, for which he received a 12-year sentence to the penitentiary. His other convictions resulted in multiple prison sentences as well.

¶ 7 When suggesting a sentence, the State asserted that “the Court should be looking at the numbers between 6 to 30 years” because they were utilizing defendant’s prior Class X felony conviction for involuntary sexual servitude of a minor as the underlying offense supporting the AHC charge. Accordingly, defendant faced a sentencing range of 6-to-30 years, and the State asserted it would recommend defendant receive 25 years’ imprisonment if he were found guilty after a trial. Defense counsel said defendant was seeking a 50% sentence on something other than a class X mandatory minimum, and he recommended defendant receive a two-year sentence with credit for time served. Based on the facts and arguments presented, the court determined 10 years’ imprisonment, served at 85%, would be appropriate. Defense counsel interjected, “Your Honor we will take eight right now if, in fact, the State would offer us eight.” The trial court refused to become involved in the negotiation process, reiterating it believed a 10-year sentence at 85% was appropriate. The State remained firm in its position that any agreed-upon sentence would have to be at 85%.

¶ 8 Sometime between the hearings conducted on June 21, 2022, and July 18, 2022, defense counsel sent defendant a letter saying:

“I received the offer to settle your case by Assistant State’s Attorney Shaw and conveyed it to you. It was 7 years at 85 percent on the [AHC] Count. You

directed me to make a counteroffer personally for 12 years at 50% pleading guilty to possession of a weapon in [sic] which I did. Mr. Shaw refused your counteroffer. The offer to plead guilty remains at 7 years at 85% on the [AHC]. Although the time is approximately the same either on the offer or the counteroffer, you refused to accept [the AHC] plea. I will continue to negotiate with the new State [sic] Attorney appointed to your case as Mr. Shaw has left the Sangamon County State's Attorney Office."

¶ 9 The transcript of the pretrial hearing held on September 6, 2022, is absent from the report of proceedings. However, the corresponding docket entry states, "All charges and possible penalties read to the Defendant on the record. Court informed plea offer made to the Defendant. State agrees to leave Plea offer open until 9/7/22 at 4:30 P.M."

¶ 10 On September 9, 2022, defendant entered into a fully negotiated plea agreement in which he pleaded guilty to AHC, a "non-probation-eligible offense," and received a sentence of "eight years to be served at 85 percent." Throughout the hearing, defendant demonstrated his understanding of the plea, first saying, "I understand I am pleading guilty for eight years at 85 percent. I understand," and later reiterating, "I'm pleading guilty to eight years, 85 percent, yes." Defendant also voiced his satisfaction with defense counsel. The court accepted the plea as knowingly and voluntarily made and admonished defendant regarding his appellate rights. The court specifically admonished defendant that he was required to file a motion to withdraw his guilty plea before attempting to appeal. Defendant filed neither a motion to withdraw his plea nor a direct appeal.

¶ 11 In March 2023, defendant filed a sworn *pro se* postconviction petition that presented a confusing cacophony of claims, referenced non-existent proceedings, alleged

violations of federal sentencing guidelines, and alleged a vast array of constitutional violations that purportedly began with the charging instrument and continued through the plea hearing. The petition claimed defendant received ineffective assistance based on defense counsel's alleged failure to determine whether defendant was eligible for extended-term sentencing. Defendant also argued the trial court erred in finding him eligible for an extended-term sentence. Notably, defendant did not allege he misapprehended the available penalties that might have impacted his decision to enter the plea, nor did he allege he would not have entered the plea but for his supposed confusion over whether he was eligible for extended-term sentencing. The petition requested this court "vacate petitioners [*sic*] sentence under 85%, and *** amend his sentencing order accordingly and grant such other and further relief as justice requires, *in setting petitioners [*sic*] sentence under 50%.*" (Emphasis added.) Nowhere in his *pro se* petition did defendant ask to withdraw his plea.

¶ 12 The trial court advanced defendant's petition to the second stage of postconviction proceedings and appointed counsel. Defendant's postconviction counsel then filed an amended petition alleging "procedural and substantive errors by [defense counsel] result[ed] in deficient representation which severely impacted the choice of [defendant] to plead guilty ***." It also claimed defense counsel's allegedly ineffective assistance "resulted in pressure and coercion for [defendant] to plead guilty involuntarily rather than go to trial where there was a likelihood of being found innocent ***." In particular, defendant alleged the following:

“[The State] lowered the offer to eight years at 85% with the offer to remaining open until the end of the [September 6] hearing. There was a discussion at the

pretrial that Mr. Shaw never offered seven years at 85%. Then, [defense counsel] made one final offer of seven years at 85% which was not addressed.”

¶ 13 Defendant’s amended petition also asserted various constitutional deprivations throughout the process leading up to defendant’s plea, including errors in the charging instrument and admonishments related to possible extended-term sentencing. Defendant acknowledged he waived his claims but urged the trial court to overlook the waiver “for fundamental fairness reasons.” Nowhere in his amended petition and accompanying affidavit did defendant seek to withdraw his plea, nor did he claim he ever wanted to withdraw his plea. Instead, he asked the court to amend the sentence outright to seven years at 85%—the same sentence contained in an offer he rejected. Alternatively, defendant requested the court or State, *sua sponte*, reduce his sentence.

¶ 14 The State moved to dismiss defendant’s amended postconviction petition, emphasizing the fully negotiated plea waived any non-jurisdictional errors, including constitutional defects occurring prior to the plea and defendant’s failure to file a motion to withdraw the plea. The State argued defendant’s claims of ineffective assistance of counsel were rebutted by the record and were matters of trial strategy. The State contended “the State and [the trial] court substantially complied with Rule 402 in the admonishment in this case and the faulty admonishment did not prejudice the Defendant.” The State argued defendant’s failure to file a motion to withdraw his plea precluded him from attacking his sentence in a postconviction petition. Additionally, the State attached an affidavit to its amended motion to dismiss, averring it offered defendant a plea deal in which he would receive 10 years at 85%, in accordance with the trial court’s comments at the Rule 402 conference.

¶ 15 The trial court ultimately dismissed defendant’s amended petition, finding he failed to make a substantial showing of a constitutional violation. The court found defendant was properly admonished when he pleaded guilty, in substantial compliance with Illinois Supreme Court rules, and the record rebutted his claim that defense counsel failed to follow defendant’s directive regarding the plea agreement. Further, defendant’s other ineffective assistance claims fell within the realm of strategic decisions left to defense counsel’s discretion.

¶ 16 On appeal, appellate counsel initially sought leave to withdraw, asserting this case presented no potentially meritorious issues for review. We denied the motion and directed counsel to file either another motion to withdraw, addressing concerns highlighted by this court, or a brief arguing the merits of defendant’s case. The parties have fully briefed this matter. Having reviewed the briefs, we acknowledge our error in failing to grant appellate counsel’s request to withdraw, as no arguably meritorious issue exists before us. Nevertheless, we will address the issues presented.

¶ 17 **II. ANALYSIS**

¶ 18 “A post-conviction proceeding is not an appeal of a defendant’s underlying judgment, but rather a collateral proceeding enabling the defendant to challenge a conviction or sentence for violations of constitutional rights.” *People v. Johnson*, 183 Ill. 2d 176, 186 (1998). The Act provides a three-stage process to adjudicate postconviction petitions. *People v. Boclair*, 202 Ill. 2d 89, 99 (2002). Defendant’s amended petition was dismissed at the second stage, where he had the statutory right to reasonable assistance of counsel. See *People v. Addison*, 2023 IL 127119, ¶ 19. Once postconviction counsel files an Illinois Supreme Court Rule 651(c) (eff. July 1, 2017) certificate, a rebuttable presumption of reasonable assistance attaches. *Addison*, 2023 IL 127119, ¶ 21. At this second stage, a petitioner must make a substantial showing his

constitutional rights were violated. *People v. Pitsonbarger*, 205 Ill. 2d 444, 455 (2002). “Well-pleaded factual allegations of a postconviction petition and its supporting evidence must be taken as true unless they are positively rebutted by the record of the original trial proceedings.” *People v. Sanders*, 2016 IL 118123, ¶ 48. We review *de novo* the dismissal of a postconviction petition at the second stage of proceedings. *People v. Urzua*, 2023 IL 127789, ¶ 28.

¶ 19 Defendant argues he received unreasonable assistance from the postconviction counsel and that the record rebuts postconviction counsel’s facially compliant Rule 651(c) certificate. Defendant must frame his argument thusly, as he has no viable postconviction claim relating to his plea or sentence after failing to move to withdraw his fully negotiated plea. The State argues postconviction counsel’s representation was not unreasonable and defendant’s failure to move to withdraw his plea in the original proceeding prevents him from challenging his guilty plea in this postconviction action. We agree and find the record refutes defendant’s claims.

¶ 20 Defendant did not appeal his original conviction. To do so, he would have had to file a motion to withdraw his fully negotiated plea. See Ill. S. Ct. R. 604(d) (eff. July 1, 2017); *People v. Williams*, 2025 IL App (4th) 240738, ¶ 35 (“[F]ollowing a court’s acceptance of a negotiated guilty plea, a defendant must move to withdraw the guilty plea, even if only to challenge the sentence imposed.”). Rule 604(d) limits how an “appeal from a judgment entered upon a plea of guilty shall be taken.” Ill. S. Ct. R. 604(d) (eff. July 1, 2017). It requires a defendant who enters a negotiated guilty plea to file a motion to withdraw the plea within 30 days following sentencing in order to appeal. Ill. S. Ct. R. 604(d) (eff. July 1, 2017). A motion to withdraw a guilty plea must be filed in the original action while the trial court still has

jurisdiction over the matter, and not as part of a postconviction petition. See *People v. Flowers*, 208 Ill. 2d 291, 303 (2003).

¶ 21 “[T]he filing of a Rule 604(d) motion is a condition precedent to an appeal from a judgment on a plea of guilty.” *Flowers*, 208 Ill. 2d at 300-01. Issues not raised in the motion are “deemed waived.” Ill. S. Ct. R. 604(d) (eff. July 1, 2017). “[T]he failure to file a timely Rule 604(d) motion precludes the appellate court from considering the appeal on the merits.” *Flowers*, 208 Ill. 2d at 301. “Where a defendant has failed to file a written motion to withdraw his plea of guilty or to reconsider his sentence, the appellate court must dismiss the appeal [citation], leaving the [Act] as the defendant’s only recourse.” *Flowers*, 208 Ill. 2d at 301.

¶ 22 The purpose of the rule “is to ensure that before a criminal appeal can be taken from a guilty plea, the trial judge who accepted the plea and imposed sentence be given the opportunity to hear the allegations of improprieties that took place outside the official proceedings and *dehors* the record.” *People v. Wilk*, 124 Ill. 2d 93, 104 (1988). Thus, the trial court is allowed “to immediately correct any improper conduct or any errors of the trial court that may have produced a guilty plea.” *Wilk*, 124 Ill. 2d at 104. Besides waiver established by noncompliance with Rule 604(d), it is well established defendant’s voluntary guilty plea waived “all non-jurisdictional errors or irregularities, *including constitutional ones*.” (Emphasis in original and internal quotation marks omitted.) *People v. Jones*, 2021 IL 126432, ¶ 20. While addressing the substantive differences in sentencing challenges of fully negotiated pleas and blind pleas in *People v. White*, 2025 IL 129767, our supreme court recently reaffirmed its holding in *Jones*, foreclosing any challenges, including constitutional ones, for fully negotiated pleas. The supreme court explained:

“Rule 604(d) expressly lays out the procedure a defendant must follow to preserve a sentencing challenge following a guilty plea, and it only requires that a defendant file a motion to reconsider sentence, if only the sentence is being challenged. [Citation.] With a negotiated plea, however, where both the plea and sentence are being challenged, a defendant must move to withdraw the plea of guilty and vacate the judgment.” *White*, 2025 IL 129767, ¶ 30.

¶ 23 The State contends defendant waived his claims by failing to comply with Rule 604(d), citing *People v. Ratliff*, 2024 IL 129356. In *Ratliff*, our supreme court declared, “Rule 604(d) is unmistakably clear: Any issue not raised in a post[trial] motion is ‘waived’ on appeal.” *Ratliff*, 2024 IL 129356, ¶ 26. The court emphasized it could ignore forfeiture to engage the merits of an appeal, but the same was not true of waived issues. *Ratliff*, 2024 IL 129356, ¶ 26. Thus, *Ratliff* abrogated a branch of oft-cited caselaw interpreting Rule 604(d)’s use of the word “waived” to mean “forfeited.” See *Ratliff*, 2024 IL 129356, ¶ 23 n.2.

¶ 24 *Ratliff* also solidified the “waiver rule” found in *People v. Stewart*, 123 Ill. 2d 368 (1988). In *Stewart*, the defendant failed to file a Rule 604(d) motion attacking his plea’s voluntariness, but instead he filed a postconviction petition arguing his plea was involuntary. *Stewart*, 123 Ill. 2d at 372. The Illinois Supreme Court found the defendant’s argument was waived, emphasizing that, “by its explicit terms, Rule 604(d) states that issues not preserved in a motion to vacate a guilty plea are waived. The waiver rule applies to post-conviction proceedings as well as to appeals.” *Stewart*, 123 Ill. 2d at 374. As the court explained:

“The scope of post-conviction review is limited by the doctrines of *res judicata* and waiver. In essence, post-conviction

proceedings are limited to issues which have not been, and could not have been, previously adjudicated. Put another way, all issues actually decided on direct appeal are *res judicata*, and all those which could have been presented but were not are deemed waived.” *Stewart*, 123 Ill. 2d at 372.

¶ 25 Here, defendant entered a fully negotiated guilty plea, but he did not file any Rule 604(d) motion. Therefore, he was precluded from filing a direct appeal. See Ill. S. Ct. R. 604(d) (eff. July 1, 2017). Additionally, as we previously observed, defendant’s plea waived “all non-jurisdictional errors or irregularities, *including constitutional ones.*” (Emphasis in original and internal quotation marks omitted.) *Jones*, 2021 IL 126432, ¶ 20. This includes all prior defects with the admonishments leading up to his plea, which postconviction counsel acknowledged in defendant’s amended postconviction petition.

¶ 26 It is evident defendant was not interested in withdrawing his plea. He merely wanted to reduce his sentence. However, “a defendant who enters into a fully negotiated plea bargain cannot unilaterally seek a reduction in his or her sentence after the trial court has accepted the plea and entered judgment.” *People v. Wells*, 2023 IL 127169, ¶ 33. The reason for this is simple:

“If a defendant were permitted to challenge his or her fully negotiated sentence without first moving to withdraw the guilty plea, it would encourage gamesmanship and ‘fl[y] in the face of contract law principles’ by ‘seeking to hold the State to its part of the bargain while unilaterally modifying the sentence[] to which

[the defendant] had earlier agreed.’ ” *Wells*, 2023 IL 127169, ¶ 33
(quoting *People v. Evans*, 174 Ill. 2d 320, 327 (1996)).

¶ 27 Postconviction proceedings are designed to address “constitutional issues involved in the original conviction that have not already been adjudicated or could have been.” (Internal quotation marks omitted.) *People v. Blair*, 215 Ill. 2d 427, 447 (2005). Otherwise, the principles of *res judicata* and waiver apply. *Stewart*, 123 Ill. 2d at 374.

¶ 28 The dissent, for its part, finds defendant’s lack of interest in taking a direct appeal to be a “complication.” But it does not matter, as the law is clear. Defendant could not appeal without first moving to withdraw his fully negotiated plea—something he did not want to do, as evidenced by this record. Defendant’s criminal history spanned decades and included multiple felony convictions and sentences of imprisonment. Defendant knew the State would ask for 25 years and that the judge, before whom he was pleading, was likely to impose a 10-year prison sentence. Defendant also had been offered 7 years at 85%, but he did not want it at the time, hoping for a 6 year sentence effectuated by offering to plead to a 12-year sentence at 50% instead. He ultimately pleaded guilty to one year more than the offer he rejected. Despite this, the dissent insists we are to believe defendant wanted to withdraw his plea. But defendant’s failure to do so or seek an appeal is only a “complication” insofar as it makes it more difficult to raise an issue on defendant’s behalf, which is exactly what we did by denying appellate counsel’s motion to withdraw. So now we are faced with a claim we forced appellate counsel to invent when we denied his motion to withdraw as counsel. Appellate counsel asks us to find defendant’s procedural defaults excused (1) where fundamental fairness requires it or (2) where the forfeiture stems from the ineffective assistance of appellate counsel. *People v. English*, 2013 IL 112890, ¶ 22. Defendant falls under neither exception, and the record resoundingly refutes his claims.

¶ 29 Postconviction counsel took defendant’s rambling and frequently disingenuous *pro se* claims and asserted “procedural and substantive errors” by defense counsel “resulting in deficient representation which severely impacted the choice of [defendant] to plead guilty rather than to have a trial.” He alleged defendant was confused about whether he was eligible for an extended-term sentence, despite a record demonstrating that was not true. Defendant’s guilty plea waived his various claims of pre-plea ineffective assistance. See *Ratliff*, 2024 IL 129356, ¶ 26. His failure to move to withdraw his plea precluded him from raising the same or similar issues via a postconviction petition. See *Stewart*, 123 Ill. 2d at 374.

¶ 30 Postconviction counsel also filed a facially valid Rule 651(c) certificate acknowledging his compliance with the requirements of the rule, thereby creating “a rebuttable presumption that counsel provided the [defendant] with a reasonable level of assistance.” *People v. Agee*, 2023 IL 128413, ¶ 43. We must presume, absent contrary evidence in the record, as counsel averred in the Rule 651(c) certificate filed in this case, that he “consulted with the Defendant by telephone, in writing or in person in order to ascertain his contentions of error with respect to the proceedings in this case and also to ascertain his contentions of constitutional deprivation of his constitutional rights.” See *Addison*, 2023 IL 127119, ¶ 21 (stating, once postconviction counsel files a Rule 651(c) certificate, a rebuttable presumption of reasonable assistance arises, and the defendant bears the burden of overcoming that presumption). In fact, defendant’s handwritten affidavit, filed with the Rule 651(c) certificate and amended motion, mirrored counsel’s motion, thereby adding to the presumption. We therefore find counsel’s factual misstatements in the amended petition about when or whether defendant was improperly advised of extended term exposure irrelevant, as defendant knew he never faced an extended-term sentence. He was so advised at the Rule 402 conference preceding his plea and was aware

the State conceded that fact. Such specious claims do not rebut the presumption attaching to a facially adequate Rule 651(c) certificate. See *Agee*, 2023 IL 128413, ¶ 43 (finding an affirmative showing from the record is necessary to rebut the presumption created by a facially valid Rule 651(c) certificate).

¶ 31 Furthermore, defendant's amended petition unwittingly serves as the best evidence of his intentions throughout these proceedings. After raising issues concerning the plea negotiations, sentence admonishments, trial preparation, and the plea itself, postconviction counsel acknowledged these have all been waived by defendant's guilty plea and his failure to move to withdraw his plea. Postconviction counsel argued the waived issues should be considered "for fundamental fairness reasons." Despite raising constitutional claims and "procedural and substantive errors in the charging instrument and admonishments," the amended petition concluded merely that defendant "deserve[d] a second chance at resentencing." Defendant's prayer for relief asked the trial court to "grant his Amended Petition for Post-Conviction Relief, reverse and resentence or amend the sentence to seven years at 85% (the State's initial offer), recommend the petition for resentence to the State's Attorney, and for all further relief that is just and equitable under the circumstances." The one remedy defendant did not seek was to be permitted to withdraw his plea.

¶ 32 Defendant's affidavit filed in support of the amended postconviction petition also avers as much. Interestingly, the one thing it does not include is an expressed desire to withdraw his plea or even an indication he directed trial counsel to file a motion pursuant to Rule 604(d) seeking to do so. Contrary to the premise put forth by the dissent, absent a desire by defendant to withdraw his plea, postconviction counsel could only have been arguably ineffective if the record

supported any desire by defendant to withdraw his plea and his trial counsel failing to file a 604(d) motion on his behalf. The record firmly establishes he did not.

¶ 33 Instead, the record clearly demonstrates defendant was interested in discussing a guilty plea well before the Rule 402 conference. Defense counsel informed the trial court during the hearing on April 25, 2022, that he was seeking a date for a Rule 402 conference. This only happens when the parties are discussing, or interested in discussing, a plea. Rule 402 conferences are not initiated by the State with an unwilling defendant. “Upon request by the defendant and with the agreement of the prosecutor, the trial judge may participate in plea discussions.” Ill. S. Ct. R. 402(d)(1) (eff. July 1, 2012). Defendant’s affidavit, his amended petition, defense counsel’s letter to defendant, and defense counsel’s comments during the Rule 402 conference reveal defendant was, at all relevant times, willing to plead guilty. The only question was the length of his sentence. He faced a sentencing range of 6-to-30 years at 85%. He had been informed of this at his first court appearance, his bond hearing, the Rule 402 conference, and the final pretrial hearing just three days before the plea hearing. During the plea hearing, defendant knew the State would have asked for a 25-year sentence if he had gone to trial, and the trial court believed a 10-year sentence was appropriate. Defendant also knew from the court’s comments at the outset of the Rule 402 conference that if he proceeded with a plea, he would be sentenced by the same judge who presided over his Rule 402 conference. According to defense counsel’s letter, defendant declined the State’s offer of 7 years at 85% because he was looking for 12 years at 50%. Defendant’s claims regarding what transpired at the final pretrial on September 6, 2022, are not supported by the record, and they would not impact our decision if proven true. Defendant had no right to a specific plea he liked better once he had rejected it. See *People v.*

Robinson, 2012 IL App (4th) 101048, ¶ 36 (stating a rejected offer cannot be revived by a later acceptance).

¶ 34 In sum, defense counsel did not provide ineffective assistance. The trial court administered sufficient admonishments, and defendant received the benefit of his plea bargain. While the dissent claims there is a basis to return this case for further proceedings based on factual errors in postconviction counsel’s amended petition, it confuses legitimate claims of ineffective assistance of counsel with contrived ones intended as a vehicle to dive into “nuanced” Illinois Supreme Court caselaw irrelevant to the facts of this case. We choose not to join in this unnecessary intellectual exercise, based on a fiction both unsupported and refuted by the record. It is clear from the record defendant never intended to withdraw his plea. He did not file a motion to withdraw his plea, nor did he allege—or even allude—that posttrial counsel somehow failed to do so in either his *pro se* postconviction petition or affidavit in support of counsel’s amended postconviction petition. Thus, there is no basis upon which to assert defendant was deprived of his opportunity to withdraw his plea or that he was denied the reasonable assistance of posttrial counsel. See *Addison*, 2023 IL 127119, ¶ 21.

¶ 35 Finally, we recognize we put appellate counsel in the unenviable position of arguing postconviction counsel’s unreasonableness as the only way around the procedural defaults created by defendant’s complete lack of interest in withdrawing his plea. We were wrong. As discussed above, postconviction counsel provided defendant reasonable assistance. He raised all of defendant’s claims, regardless of how incongruous they were with both the record and each other. By requiring appellate counsel to brief this issue, we unfortunately put him in the position of having to invent an issue out of whole cloth—something we have criticized appellate counsel for doing in the past, and for which we are now responsible. As a

court of review, we should not be inventing issues on behalf of defendants, nor should we obligate counsel to do so.

¶ 36

III. CONCLUSION

¶ 37 For the reasons stated above, we affirm the trial court's second-stage dismissal of defendant's amended postconviction petition.

¶ 38 Affirmed.

¶ 39 JUSTICE DOHERTY, dissenting:

¶ 40 Defendant's conviction resulted from a fully negotiated plea agreement. At the time he entered his plea, defendant was erroneously advised that he was eligible for an extended-term sentence of between 6 and 60 years' imprisonment. After being sentenced to 8 years' imprisonment, defendant did not seek to withdraw his plea or take a direct appeal from his conviction.

¶ 41 Defendant then filed a *pro se* postconviction petition raising this error in the plea admonitions. His petition referred to an "In-Voluntary [*sic*] plea" and asserted that he "entered a plea unintelligently, due to in-effective [*sic*] assistance of counsel where the court's application of incorrect base level offense was clear error." Counsel appointed below to assist defendant filed an amendment to the *pro se* petition, asserting that the sentence admonition at the time of the plea was *correct*, but that defendant was prejudiced by earlier statements of the possible sentencing range that were *incorrect*. Appointed counsel's formulation of the issue was wrong in both respects.

¶ 42 The issue here is not the merits of defendant's postconviction petition, but whether he received reasonable assistance from appointed counsel in its pursuit. The majority finds that defendant's petition faces an immovable roadblock, stating that defendant "has no

viable postconviction claim relating to his plea or sentence after failing to move to withdraw his fully negotiated plea” in the original case pursuant to Rule 604(d). I believe the majority’s analysis of the issue is incomplete, as it fails to adequately address the nuanced—and sometimes conflicting—supreme court caselaw on this topic. The majority also suggests that “defendant was not interested in withdrawing his plea” and “merely wanted to reduce his sentence.” This is a conclusion I do not find to be clearly supported by the record. For these reasons, as discussed more fully below, I dissent.

¶ 43 This case is complicated by the fact that defendant did not take a direct appeal from his original conviction. Before I address that circumstance, I set out my understanding of the interplay between Rule 604(d) and postconviction cases in the more common setting, *i.e.*, where a direct appeal was taken from the original conviction.

¶ 44 A. Operation of Rule 604(d) in Direct Appeals

¶ 45 A central issue here is whether and how Rule 604(d) applies to a subsequent postconviction case or limits the issues which can be raised in it. Defendant argues that the rule simply does not apply in the postconviction setting. In a literal sense, that seems clear enough because Rule 604(d) serves as a limitation on how an “*appeal* from a judgment entered upon a plea of guilty shall be taken.” (Emphasis added.) Ill. S. Ct. R. 604(d) (eff. July 1, 2017). A motion to withdraw a guilty plea must be filed in the original action while the trial court still has jurisdiction over the matter; such a motion is not filed as part of the postconviction case. See *Flowers*, 208 Ill. 2d at 303 (holding that Rule 604(d)’s motion requirement is inapplicable to a postconviction action, and such a motion cannot be filed in the original case after the trial court has lost jurisdiction over it).

¶ 46 The issue, however, is not just whether Rule 604(d) “applies” in a postconviction proceeding; the question is whether noncompliance with Rule 604(d) in the original proceeding has an *effect* on the issues which can be raised in the postconviction petition. By its very nature, defendant’s guilty plea waived “ ‘ “all non-jurisdictional errors or irregularities, *including constitutional ones.*” ’ ” (Emphasis in original.) *Jones*, 2021 IL 126432, ¶ 20 (quoting *People v. Sophanavong*, 2020 IL 124337, ¶ 33, quoting *People v. Townsell*, 209 Ill. 2d 543, 545 (2004)). The only exception to this broad procedural bar is a challenge to the knowing and voluntary nature of the plea. *Id.* ¶ 23.

¶ 47 Illinois Supreme Court Rule 604(d) (eff. July 1, 2017) requires a defendant who enters into a negotiated guilty plea to file a motion to withdraw the plea within 30 days following sentencing in order to appeal. Any issue not raised in the motion is “deemed waived.” Ill. S. Ct. R. 604(d) (eff. July 1, 2017). The purpose of the rule “is to ensure that before a criminal appeal can be taken from a guilty plea, the trial judge who accepted the plea and imposed sentence be given the opportunity to hear the allegations of improprieties that took place outside the official proceedings and *dehors* the record,” thus allowing the “trial court to immediately correct any improper conduct or any errors of the trial court that may have produced a guilty plea.” *Wilk*, 124 Ill. 2d at 104.

¶ 48 Lest there be any confusion that the “waiver” referred to in Rule 604(d) was really just a matter of forfeiture, the supreme court’s recent decision in *Ratliff*, 2024 IL 129356, set the record straight:

“We recognize that we have strayed from the text of Rule 604(d), commenting without rationale that the defendant’s failure to raise an issue in a postplea motion is more properly termed a forfeiture than a waiver. [Citation.]

Here, we rectify that misstep and track the language of what we previously called the ‘waiver rule.’ *People v. Stewart*, 123 Ill. 2d 368, 374 (1988) (‘by its explicit terms, Rule 604(d) states that issues not preserved in a motion to vacate a guilty plea are waived’).” *Id.* ¶ 23 n.2.

The significance of *Ratliff*’s citation of *Stewart* will be discussed below, as *Stewart* addresses the consequence of Rule 604(d) waiver in the context of a postconviction proceeding.

¶ 49 B. Forfeiture, Waiver, and *Res Judicata* in Postconviction Cases

¶ 50 With the understanding that the failure to seek withdrawal of a guilty plea pursuant to Rule 604(d) will likely be fatal to a defendant’s direct appeal, I now move to the context applicable here: a petition for postconviction relief.

¶ 51 The Act provides a remedy to defendants whose conviction resulted from a substantial denial of rights under the United States Constitution or the Illinois Constitution. *Addison*, 2023 IL 127119, ¶ 18. A postconviction petition is a civil action that constitutes a collateral attack on the prior conviction or sentence, and it does not relitigate the defendant’s guilt or innocence. *People v. Ligon*, 239 Ill. 2d 94, 103 (2010). The purpose of a postconviction proceeding is to address “constitutional issues that were not, *and could not have been*, adjudicated on direct appeal.” (Emphasis added.) *Pitsonbarger*, 205 Ill. 2d at 455-56. However, the doctrines of *res judicata*, waiver, and forfeiture operate to bar the raising of claims that were or could have been adjudicated on direct appeal. *Blair*, 215 Ill. 2d at 443. A procedural default will be excused in three situations: where fundamental fairness requires it; where the forfeiture stems from the ineffective assistance of counsel; or where the facts relating to the issue do not appear on the face of the original appellate record. *English*, 2013 IL 112890, ¶ 22.

¶ 52 As discussed above, a defendant’s failure to seek to withdraw a guilty plea stands as a *waiver* of any arguments toward that end on direct appeal. But does that waiver affect the issues that can be raised in a postconviction proceeding? The Illinois Supreme Court has made statements on that question which, at least on the surface, appear to conflict. In *People v. Wilk*, 124 Ill. 2d at 107, the supreme court held that the defendant’s failure to file a motion to withdraw his guilty plea required dismissal of his direct appeal, but it added that his “appropriate remedy” was a postconviction petition. However, in *Stewart*, 123 Ill. 2d at 374, a defendant who failed to attack the voluntariness of his plea in a Rule 604(d) motion was advised that the “waiver rule applies to post-conviction proceedings as well as to appeals.” Recall that *Stewart* was cited in the supreme court’s recent *Ratliff* decision.

¶ 53 These superficially conflicting rulings can be reconciled by the understanding that a defendant’s waiver of an issue under Rule 604(d) is not *ignored* in a postconviction proceeding, but it may be *overcome* in the same manner as other procedural defaults. See *English*, 2013 IL 112890, ¶ 22 (identifying the three established exceptions to application of *res judicata* and forfeiture in postconviction proceedings). The relevant issue in such a postconviction action would be a claim that ineffective assistance of postplea counsel led to the failure to file a proper and complete Rule 604(d) motion. In other words, a defendant’s noncompliance with Rule 604(d) might not be fatal in a subsequent postconviction case if the cause of noncompliance was his attorney’s ineffectiveness.

¶ 54 This concept is illustrated in *Wilk*, which offered that postconviction relief might be available to a defendant who failed to comply with Rule 604(d), and such relief would essentially focus on “whether or not defendant has received effective assistance of counsel” in regard to the failure to file a proper motion. *Wilk*, 124 Ill. 2d at 107. Such an inquiry might

examine these questions: “Did the defendant communicate a desire to appeal? Was counsel appointed? Did counsel fail to follow Rule 604(d)?” *Id.* at 108. Finally, the court envisioned what relief might look like in such a postconviction action: “If post-conviction relief is granted, there will be a hearing under Rule 604(d) and defendant will be permitted to withdraw the plea when the trial court finds merit in the motion.” *Id.*

¶ 55 Similarly, in *Flowers*, the court dismissed the direct appeal of a defendant who pleaded guilty but failed to file a timely Rule 604(d) motion to withdraw the plea. *Flowers*, 208 Ill. 2d at 305. In pointing to the “alternate remedy” of a postconviction proceeding, the court again suggested that the nature of that remedy requires exploration of whether ineffective assistance of counsel was responsible for the defendant’s procedural default. *Id.* at 306. The defendant’s situation in *Flowers* was contrasted with that of the defendant in *People v. Belcher*, 199 Ill. 2d 378 (2002), where the defendant had no postconviction remedy because his “was not a situation where the defendant’s failure to move for withdrawal of his guilty plea had resulted from ineffective assistance of counsel and the case did not otherwise involve an abridgement of constitutional rights.” *Flowers*, 208 Ill. 2d at 305.

¶ 56 Both *Wilk* and *Flowers* involved direct appeals, so their suggestions about what postconviction relief might be available to the defendants in those cases could be considered *dicta*. However, *Stewart*, which stated unequivocally that Rule 604(d)’s “waiver rule applies to post-conviction proceedings as well as to appeals,” was a postconviction case (and specifically referenced in *Ratliff*). Another postconviction case, *People v. Brooks*, 233 Ill. 2d 146 (2009), also demonstrates exactly the approach discussed in *Flowers* and *Wilk*. The defendant in *Brooks* did not file a motion to withdraw his guilty plea, but he did send a letter to the clerk advising that he wished to appeal his sentence. The letter was treated as a notice of appeal, but the direct appeal

was dismissed for noncompliance with Rule 604(d). *Id.* at 150-51. The supreme court held that, following proper Rule 605(b) admonishments, “a defendant’s right to due process is not violated if he is thereafter held to the consequences of failing to comply with Rule 604(d).” *Id.* at 155. However, the court found one aspect of defendant’s postconviction petition that might state a basis for relief—namely, his attorney’s failings in ensuring that a proper Rule 604(d) motion was filed:

“Defendant also argues, however, that his trial attorney was constitutionally ineffective in advising him to send the letter. According to defendant, his trial attorney’s advice was clearly erroneous in light of Rule 604(d) and therefore constituted deficient performance under *Strickland v. Washington*, 466 U.S. 668 [] (1984). Further, defendant alleges that he was prejudiced by his attorney’s deficient performance because, in relying on his attorney’s advice to send the letter, he lost the right to his direct appeal. *** [D]efendant maintains that he received constitutionally ineffective assistance of counsel and, thus, his postconviction petition should not be summarily dismissed.” *Brooks*, 233 Ill. 2d at 156-57.

Brooks remanded the cause for further proceedings on this aspect of the defendant’s postconviction claim. *Id.* at 157.

¶ 57 This approach—allowing a postconviction remedy for constitutional issues relating to the plea, but only after first addressing whether ineffectiveness of counsel led to noncompliance with Rule 604(d)—is also consistent with the waiver rule reaffirmed in *Ratliff*. As noted above, after some years of appellate decisions conflating Rule 604(d)’s waiver provision with mere forfeiture, *Ratliff* reasserted that the issue is, in fact, one of waiver. *Ratliff*

represents a reaffirmation of the underlying purpose of the rule: “to eliminate needless trips to the appellate court and to give the trial court an opportunity to consider the alleged errors and to make a record for the appellate court to consider on review in cases where defendant’s claim is disallowed.” *Wilk*, 124 Ill. 2d at 106. It would be a strange result if the only effect of Rule 604(d) were to create *another* action (*i.e.*, a postconviction proceeding attacking the plea for the first time) and possibly another appeal. See *People v. Cregan*, 2014 IL 113600, ¶ 18 (finding that “the interests in judicial economy favor[ed] addressing [a constitutional] issue on direct appeal rather than requiring defendant to raise it in a separate postconviction petition”). In other words, what would be the point of Rule 604(d) noncompliance rendering an issue strictly off limits in a direct appeal, but leaving it unfettered in a postconviction action? *Wilk*, *Flowers*, and *Brooks* tell us that postconviction relief is available in these cases, but only insofar as ineffective assistance of counsel led to the procedural default.

¶ 58 This approach is also consistent with the overall purpose of the Act. Courts have repeatedly articulated that postconviction petitions are *not* an appeal from the underlying proceedings. See, *e.g.*, *People v. Ruiz*, 132 Ill. 2d 1, 9 (1989). Proceedings under the Act are collateral to a direct appeal and are not a substitute for it. *People v. Prante*, 2023 IL 127241, ¶ 58. Moreover, proceedings under the Act are to address “constitutional issues that were not, *and could not have been*, adjudicated on direct appeal.” (Emphasis added.) *Pitsonbarger*, 205 Ill. 2d at 455-56.

¶ 59 That is not to say that all supreme court precedent aligns perfectly with *Wilk*, *Flowers*, and *Brooks*. Notably, in *People v. Stroud*, 208 Ill. 2d 398 (2004), the supreme court held that a defendant’s claim that his plea was involuntary due to faulty admonitions “may be raised for the first time in a postconviction petition.” *Id.* at 403; accord *People v. Whitfield*, 217

Ill. 2d 177, 188 (2005) (involving a guilty plea admonishment that was never given). I note that the defendant's direct appeal in *Stroud* was dismissed for Rule 604(d) noncompliance, and the court did not address why the normal rules of forfeiture, waiver, and *res judicata* would not apply in defendant's subsequent postconviction action. A possible reason for the departure in *Stroud* is the unusual circumstance of the supreme court using the case as an opportunity to create a new plea admonishment to be given going forward. *Stroud*, 208 Ill. 2d at 413.

¶ 60 Moreover, appellate court decisions have disagreed on the question of whether a Rule 604(d) failure on direct appeal can impact the issues that can be raised in a postconviction petition. Compare *People v. Vilces*, 321 Ill. App. 3d 937 (2001), with *People v. Miranda*, 329 Ill. App. 3d 837, 842 (2002), and *People v. Stein*, 255 Ill. App. 3d 847, 848 (1993). The split, especially within individual districts, becomes striking when reviewing unpublished decisions. Compare *People v. Hampton*, 2020 IL App (1st) 171137-U, with *People v. Boswell*, 2019 IL App (1st) 160915-U, ¶ 16; compare *People v. Meeks*, 2024 IL App (5th) 230282-U, ¶ 14, and *People v. Rynders*, 2024 IL App (5th) 220409-U, ¶ 21, with *People v. Gervais*, 2019 IL App (5th) 160054-U, ¶ 17; compare *People v. McNeil*, 2025 IL App (2d) 230542-U, ¶ 21, with *People v. Romero*, 2022 IL App (2d) 191106-U, ¶ 25. The takeaway here is that the appellate caselaw on the effect of Rule 604(d) noncompliance in the postconviction setting is in conflict (though, as discussed below, in the Fourth District it has been uniform prior to today). The uncertainty in the state of the law has not escaped the attention of the practicing bar. See, e.g., Emmet C. Fairfield, *Does Supreme Court Rule 604(d)'s Waiver Rule Apply in Proceedings Under the Post-Conviction Hearing Act? The Answer is Clear as Mud*, 36 J. of the DuPage County B. Ass'n Brief 26 (2023).

¶ 61 In any event, the analysis laid out above elucidates what appears to be the clearest rule to be derived from sometimes conflicting supreme court caselaw in this area: Rule 604(d) noncompliance does not foreclose a potential postconviction remedy, but the defendant must first show that his Rule 604(d) noncompliance was the result of counsel's ineffectiveness. Upon a showing that his Rule 604(d) failure was due to counsel's ineffectiveness, the remedy would be to give defendant the opportunity to file a motion seeking withdrawal of his plea. See *Wilk*, 124 Ill. 2d at 108 (describing the postconviction process in this circumstance). The critical takeaway here is that, while Rule 604(d) does not apply to postconviction cases, noncompliance with the rule in the original proceedings can have a preclusive effect in the postconviction case, at least where a direct appeal is attempted. With this understanding in mind, I now address the situation where, as here, the defendant filed neither a Rule 604(d) motion nor a direct appeal.

¶ 62 C. Effect of a Defendant's Failure to File a Direct Appeal

¶ 63 The foregoing analysis suggests that, where a defendant fails to timely seek withdrawal of his plea pursuant to Rule 604(d), it will likely be fatal to a later effort to set aside his guilty plea in postconviction proceedings unless that failure is due to the ineffectiveness of counsel. Here, defendant did not even attempt to comply with Rule 604(d), or to appeal. It is difficult to understand why Rule 604(d) waiver would be found in the case of a defendant who tried but failed to set aside his plea in a direct appeal, but not in the case of a defendant who sought neither withdrawal of the plea nor a direct appeal before bringing a postconviction action.

¶ 64 There is some basis to wonder whether the supreme court might now find that the failure to seek withdrawal of a plea in the original case could have preclusive effect in a subsequent postconviction action, at least where that failure cannot be laid at the feet of counsel. Recall that the defendant in *Belcher* filed a Rule 604(d) motion, but the motion did not raise the

issue he wished to argue on appeal. In *Flowers*, the supreme court contrasted the facts there with those in *Belcher*, where the defendant's Rule 604(d) motion was filed, but lacking. *Flowers*, 208 Ill. 2d at 305. The *Flowers* court acknowledged that *Belcher* overlooked those deficiencies "in the interests of justice," but it concluded that such circumstances did not exist in *Flowers*, where the motion was filed months after the trial court had lost jurisdiction. *Id.* The supreme court went on to state in *Flowers* that, because counsel was not responsible for defendant's failure to comply with Rule 604(d) in *Belcher*, he did not have a postconviction remedy:

"[B]ecause this was not a situation where the defendant's failure to move for withdrawal of his guilty plea had resulted from ineffective assistance of counsel and the case did not otherwise involve an abridgment of constitutional rights, the defendant had no recourse under the Post-Conviction Hearing Act. As a result, until he reached our court, the defendant was left with no escape from the consequences of a plea based on application of an invalid statute." *Flowers*, 208 Ill. 2d at 305.

The supreme court granted relief to the defendant in *Belcher* not because his Rule 604(d) failings were overlooked, but because the "unusual circumstances" of that case reflected a misapprehension of the law caused by a subsequent declaration of the applicable statute's unconstitutionality. *Belcher*, 199 Ill. 2d at 383. Otherwise, under more "usual circumstances," the failure to file a Rule 604(d) motion "would leave a defendant without remedy." *Id.* at 382.

¶ 65 It is, however, difficult to square this analysis with the supreme court's decision in *People v. Rose*, 43 Ill. 2d 273 (1969). Though it does not involve a guilty plea and predates Rule 604(d) (see Ill. S. Ct. R. 604(d), Committee Comments (rev. July 1, 1975)), *Rose* addressed the effect of a failure to appeal a conviction on the ability of the two defendants in that case to

seek postconviction relief under the Act. The *Rose* court began by observing that “The Post-Conviction Hearing Act provides a separate remedy, the availability of which is not contingent upon exhaustion of any other remedy.” *Rose*, 43 Ill. 2d at 279. This seems straightforward enough; there is no explicit requirement that a defendant must appeal before seeking postconviction relief. The real question, though, is the potential preclusive effects arising from the earlier litigation. Instead of finding that the unappealed *trial* judgment could have preclusive effects in a postconviction case, the supreme court suggested that only *appellate review* of a trial judgment would trigger preclusion.

¶ 66 With respect to the effect of *res judicata*, the *Rose* court stated that the “concept of *res judicata* clearly does not bar petitioners’ claims here, since those claims have not been reviewed, and the present proceedings are timely.” *Id.* While *Rose* suggests that *res judicata* only applies when there has been a prior *appellate* decision, well-established supreme court caselaw establishes that *res judicata* arises from adjudications made by any “court of competent jurisdiction” without limitation to appellate courts. (Internal quotation marks omitted.) *People v. Stoecker*, 2020 IL 124807, ¶ 29.

¶ 67 Further, if *Rose* is suggesting that only matters *actually decided* have preclusive effect under *res judicata*, such a statement would conflict with decisions declaring that the doctrine applies to matters which “were *or could have been* adjudicated” in the earlier proceeding. (Emphasis added.) *Blair*, 215 Ill. 2d at 443. In any event, here the trial court found at the time of defendant’s plea that it was voluntarily given, yet defendant seeks to argue the contrary proposition based on essentially the same record available in the trial court. In other words, despite the fact that voluntariness of defendant’s plea was determined in the original proceeding, defendant seeks to collaterally attack that conclusion in a postconviction proceeding

based on the same record. Regardless, however, the preclusive effect of *res judicata* appears to be in the nature of an affirmative defense at the second-stage of the postconviction proceedings (*id.* at 450), and the State has not relied on *res judicata* as a basis for dismissal of defendant’s petition either below or on appeal. Consequently, we need not address whether, in light of *Rose*, *res judicata* would bar defendant’s collateral attack of the original trial court determination that his plea was knowing and voluntary.

¶ 68 *Rose* also asserts that “waiver does not bar assertion here of constitutional rights.” *Rose*, 43 Ill. 2d at 279. However, every postconviction proceeding is, by its nature, the assertion of constitutional rights; such rights are the only proper subject of a postconviction action. *Addison*, 2023 IL 127119, ¶ 18; 725 ILCS 5/122-1(a)(1) (West 2024). The suggestion that waiver cannot apply in a postconviction proceeding appears to contradict other, more recent supreme court authority. See, e.g., *Blair*, 215 Ill. 2d at 442 (holding that “trial courts may summarily dismiss postconviction petitions based on both *res judicata* and waiver”); *People v. Harris*, 206 Ill. 2d 1, 12-13 (2002) (holding that postconviction relief permits inquiry into constitutional issues that were not, and could not have been adjudicated in the original proceedings, and that issues that could have been presented, but were not, are waived).

¶ 69 There are multiple factors to be considered in determining whether this court must follow *Rose*. The other cases discussed above do not echo the view that only appellate review triggers preclusion; these cases are more recent than *Rose*, but *Rose* is the only one to directly address that proposition. I note that prior cases from this district appear to have uniformly followed *Rose*. See *People v. Culp*, 127 Ill. App. 3d 916, 920-21 (1984) (following *Rose* to conclude that the defendant’s failure to file a Rule 604(d) motion to withdraw his guilty plea does not bar a postconviction claim that his plea was involuntary); *People v. Brooks*, 371 Ill.

App. 3d 482, 486 (2007) (finding that *Rose* remains good law); see also *People v. McGrone*, 2021 IL App (4th) 190653-U, ¶ 37 (finding that “despite entering a negotiated guilty plea, defendant did not waive his postconviction claims solely because he failed to file a motion to withdraw his guilty plea pursuant to Rule 604(d)” and concluding that the requirements of Rule 604(d) “do not apply in postconviction proceedings”). The majority’s decision to the contrary—which does not even mention *Rose*, much less attempt to distinguish it—now creates an intra-district split in Fourth District authority.

¶ 70 I would welcome the supreme court revisiting its holding in *Rose*, but it is solely the supreme court’s prerogative to do so. In the name of consistency, and absent any further guidance from the supreme court, I feel that we are bound to apply *Rose* here and conclude that where a defendant has not taken a direct appeal, defendant’s failure to file a Rule 604(d) motion to withdraw his guilty plea does not constitute a waiver of the right to argue that the plea was not knowing and voluntary.

¶ 71 D. Defendant’s Petition

¶ 72 Turning to the merits, defendant is correct in his assertion that he was improperly admonished regarding his sentencing range. Although the State declines to directly engage the merits of this argument, such a conclusion is inevitable because the State already used defendant’s prior felony offenses to charge him with being an armed habitual criminal; thus, the prior felony offenses could not be used again as a basis to impose an extended-term sentence. See *People v. Shaw-Sodaro*, 2023 IL App (4th) 220704, ¶ 47 (noting that it is an improper double enhancement to allow the same consideration to form both an element of the underlying offense and allow for extended-term sentencing).

¶ 73 Below, only defendant seemed to correctly grasp this fact. His *pro se* petition correctly argued that the admonishment given at his plea hearing concerning the possibility of an extended-term sentence was incorrect. His petition argued that his plea was involuntary “due to [ineffective] assistance of counsel [] where the court’s application of incorrect base level offense is clear error.” His appointed counsel, on the other hand, amended defendant’s *pro se* petition to allege the converse, *i.e.*, that while the sentencing admonition at the time of the plea was accurate, earlier admonitions (which did not reference a possible extended term) were not. Defendant argues on appeal that postconviction counsel provided unreasonable assistance by amending his *pro se* petition to advance a claim that was wrong on both the facts and the law. Specifically, defendant alleges that the amendment took his vague claim that the plea was involuntary and “somehow made it worse” by arguing that when the court *correctly* admonished defendant, his plea was involuntary.

¶ 74 The Act provides a three-stage process to adjudicate postconviction petitions. *Boclair*, 202 Ill. 2d at 99. This matter proceeded past the first stage, where the court found that defendant presented the gist of a constitutional claim. Defendant’s petition was dismissed at the second stage, where he had the statutory right to reasonable assistance of counsel. *Addison*, 2023 IL 127119, ¶ 19. Once postconviction counsel files a Rule 651(c) certificate, a rebuttable presumption of reasonable assistance attaches. *Id.* ¶ 21. A defendant may overcome this presumption by, among other things, showing that counsel failed to make necessary amendments to the petition, such as those to overcome procedural bars. *Id.*

¶ 75 Here, I would reverse the second-stage dismissal of defendant’s postconviction petition because he received unreasonable assistance of counsel. This conclusion is based on the simple fact that defendant alleged in his *pro se* petition that he was improperly admonished and

that his plea was involuntary due to either the incorrect admonishment from the court or the ineffective assistance of plea counsel. See *Addison*, 2023 IL 127119, ¶ 42 (“[W]hen appointed counsel does not adequately fulfill his or her duties under Rule 651(c), a remand is required regardless of whether the petition’s claims have merit.”).

¶ 76 Regardless of the underlying merits of this claim, postconviction counsel took this potentially viable claim and amended it into a claim that has no legal merit, as it would be facially untenable to argue that a trial court could be reversed for giving *correct* plea admonitions (as counsel erroneously characterized them). Even if postconviction counsel was right in asserting that earlier admonishments were incorrect, defendant’s plea waived all prior defects in the admonishments leading up to his plea, a fact postconviction counsel actually relied on in the amended petition. See *Tollett v. Henderson*, 411 U.S. 258, 267 (1973) (“When a criminal defendant has solemnly admitted in open court that he is in fact guilty of the offense with which he is charged, he may not thereafter raise independent claims relating to the deprivation of constitutional rights that occurred prior to the entry of the guilty plea.”). Amending defendant’s claim in such a way resulted in him being worse off than if counsel would have simply repleaded the contentions that defendant’s plea was involuntary because he was incorrectly admonished at the time it was made. Similar to *Addison*, “we are faced with the unusual situation in which postconviction counsel, in one significant sense, made the *pro se* petition worse by amending it.” *Addison*, 2023 IL 127119, ¶ 24.

¶ 77 I also reject the State’s argument that defendant’s petition did not seek to set aside his guilty plea in the postconviction action. Defendant’s *pro se* petition refers to an “In-Voluntary [*sic*] plea” and asserts that defendant “entered a plea unintelligently, due to ineffective [*sic*] assistance of counsel where the court’s application of incorrect base level offense

was clear error.” Appointed post-conviction counsel filed an amended petition—after consulting with defendant, per his Rule 651(c) certification—arguing that the incorrect admonitions constituted “a procedural error that should result in Mr. Huddleston being *able to withdraw his guilty plea* and choose between a trial or to be resentenced.” (Emphasis added.) While both the *pro se* and amended petitions expressed a desire for resentencing, the amended petition suggests an awareness that this would be a possible step only *after* the plea was withdrawn.

¶ 78 Accordingly, I would hold that defendant has made a sufficient showing that postconviction counsel failed to comply with Rule 651(c), thereby rebutting counsel’s filed certificate. I would reverse the trial court’s dismissal of defendant’s petition and remand for further second-stage proceedings. I emphasize that I have nowhere here decided the merits of defendant’s postconviction claim, as I would simply hold that defendant is entitled to the reasonable assistance of counsel in framing his claim for resolution. Furthermore, it would be prudent to advise defendant that withdrawal of his plea would potentially subject him to an even greater sentence. See *People v. Edmondson*, 2025 IL App (4th) 240782, ¶¶ 54-60 (suggesting a process to ensure that a defendant understands the risks attendant to withdrawing a guilty plea).

¶ 79 E. Appellate Counsel’s Motion to Withdraw

¶ 80 Rule 651(b) provides that indigent defendants are entitled to appointment of counsel on appeal in postconviction matters. Ill. S. Ct. R. 651(b) (eff. July 1, 2017). However, appointed counsel is not required “to advance frivolous or spurious claims on defendant’s behalf.” *People v. Greer*, 212 Ill. 2d 192, 205 (2004). *Anders*, which deals with the constitutional right to counsel, is not directly applicable here, where the right arises by statute and rule. *People v. White*, 2020 IL App (4th) 160793, ¶¶ 44-50. However, whether applying *Anders* or Rule

651(b), “frivolous” or “patently without merit” essentially means that the argument has no arguable basis in either law or fact. *People v. Hodges*, 234 Ill. 2d 1, 11-12 (2009).

¶ 81 As noted above, we denied appellate counsel’s motion to withdraw because we felt—at the time, unanimously—that the motion did not adequately address two issues: (1) the propriety of the plea admonishments in light of *Addison* and (2) whether Rule 604(d) applies in the postconviction setting. The latter issue, of course, is central to the analysis of both the majority and this dissent, and the majority discusses the merits of the former. We gave appellate counsel the opportunity to amend the motion to withdraw to address these two issues or, in the alternative, to file a brief on the merits. Counsel chose the latter option, and I am glad that he did. I understand that the majority and I disagree on the Rule 604(d) analysis, but surely it does not suggest that the legal issues here—which find support in the supreme court’s decisions in *Stroud* and *Rose*, as well as within this district—present “no arguably meritorious issue.”

¶ 82 While the focus here is strictly on the sufficiency of postconviction counsel’s presentation of defendant’s claim, the majority drifts into discussing its merits, stating that the “trial court gave sufficient admonishments at the plea hearing.” Factually, I find this difficult to understand. Defendant was given conflicting information on that point at various pretrial hearings. At the time of the plea hearing, the trial judge admonished him—incorrectly—that he was subject to an extended term of 60 years’ imprisonment:

“And you understand that you’re extended-term, meaning that you’re subject to six to 60 years with a three-year mandatory supervised release period. Do you understand that those are the potential penalties.”

In other words, the court told defendant that, absent the negotiated plea, he was facing double the high-end sentence that the law allowed.

¶ 83 I share the majority’s skepticism at whether defendant truly did not understand the maximum penalties; I also question whether a defendant who agrees to a plea when thinking he faced a 30 year penalty would be less likely to accept it if he is later told that he faces 60 years. But this misses the point. These are concerns about the *merits* of defendant’s postconviction claim, not whether postconviction counsel adequately presented it; this approach contravenes the clear holding of *Addison*, which we cited in conditionally denying appellate counsel’s motion to withdraw. *Addison* took issue with postconviction counsel determining that there were issues in the defendant’s *pro se* petition that were “worth pursuing” but not shaped “into proper form,” further noting that counsel had “*eliminated* the necessary allegations from defendant’s *pro se* petition.” (Emphasis in original.) *Addison*, 2023 IL 127119, ¶ 30. Where counsel fails in this manner, the cause is to be “remanded *without a consideration of whether the petition’s claims have merit.*” (Emphasis added.) *Id.* ¶ 33. Appellate counsel has properly presented this argument.

¶ 84 The majority is also of the view that “[t]he one remedy defendant does not seek is to be permitted to withdraw his plea.” Given the clear statements by postconviction counsel in the amended petition, I do not find this to be a conclusion that we can confidently draw from the record. I do not in any way fault appellate counsel for making an argument based on explicit statements from the record, nor do I consider it the fashioning of an argument from “whole cloth.”

¶ 85 For the foregoing reasons, I dissent from the affirmance of the second-stage dismissal of defendant’s amended postconviction petition. I would reverse the dismissal and remand this case in compliance with *Addison*.

People v. Huddleston, 2026 IL App (4th) 240716

Decision Under Review: Appeal from the Circuit Court of Sangamon County, No. 22-CF-171; the Hon. Jennifer M. Ascher, Judge, presiding.

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