

No. 1-09-0741

**NOTICE:** This order was filed under Supreme Court Rule 23 and may not be cited as precedent by any party except in the limited circumstances allowed under Rule 23(e) (1).

SECOND DIVISION  
JANUARY 4, 2011

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IN THE  
APPELLATE COURT OF ILLINOIS  
FIRST JUDICIAL DISTRICT

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THE PEOPLE OF THE STATE OF ILLINOIS,	)	Appeal from the
	)	Circuit Court of
Plaintiff-Appellee,	)	Cook Count.
	)	
v.	)	No. 03 CR 16413
	)	
ROBERT WILLIFORD,	)	The Honorable
	)	Kenneth J. Wadas,
Defendant-Appellant.	)	Judge Presiding.

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JUSTICE HARRIS delivered the judgment of the court.

PRESIDING JUSTICE CUNNINGHAM and JUSTICE CONNORS concurred in the judgment.

**O R D E R**

*HELD:* Where post-conviction counsel did not amend defendant's *pro se* petition to include a claim of the ineffectiveness of appellate counsel, thus waiving defendant's potential claim of the ineffective assistance of trial counsel, post-conviction counsel's performance did not comply with Rule 651(c); the dismissal of defendant's post-conviction petition was reversed and the case remanded to allow defendant to replead with the assistance of counsel.

Defendant Robert Williford appeals the circuit court's grant

of the State's motion to dismiss his *pro se* post-conviction petition, which included allegations that his trial counsel was ineffective in failing to challenge various identifications of him as the offender. On appeal, defendant argues his post-conviction counsel did not provide reasonable assistance because counsel did not amend his petition to allege the ineffectiveness of appellate counsel for failing to raise on direct appeal the issue of trial counsel's performance. For the reasons set out below, we reverse the dismissal of defendant's post-conviction petition and remand to allow defendant to replead his post-conviction petition with the assistance of counsel.

At defendant's jury trial, the State presented evidence that defendant and three other men assaulted and robbed Jacquelynn Popp and Michael Hurst. After their assailants fled in an SUV, Popp and Hurst identified defendant and two other men when police brought the suspects to a nearby store where the victims had gone to report the crime. Hurst also identified defendant in court as one of his attackers. Defendant was convicted of armed robbery and aggravated battery and was sentenced to concurrent prison terms of 25 years and 5 years. On appeal, this court affirmed defendant's convictions and sentence. *People v. Williford*, No. 1-05-2071 (2009) (unpublished order under Supreme Court Rule 23).

Defendant filed a *pro se* post-conviction petition in which he claimed trial counsel was ineffective in failing to seek the

suppression of certain identification testimony. Defendant argued one of the State witnesses did not view the assailant's face and that the victims' identification of him at the store was a suggestive show-up identification.

Counsel was appointed to represent defendant, and post-conviction counsel filed a certificate pursuant to Supreme Court Rule 651(c) (eff. Dec. 1, 1984), stating, in pertinent part, that the petition adequately presented defendant's post-conviction claims.

The State moved to dismiss the petition, arguing defendant's claims of the ineffectiveness of his trial counsel were waived because they could have been raised on direct appeal. After the State filed its motion to dismiss, a second Rule 651(c) certificate was filed by a different post-conviction attorney. The certificate stated that attorney had examined the trial record and made any amendments "necessary for an adequate presentation" of defendant's contentions, although it does not appear defendant's post-conviction claims were amended.

After hearing argument, the circuit court granted the State's motion to dismiss defendant's petition, stating that "many of the issues raised were waived" and that defendant did not establish his trial counsel's ineffectiveness.

On appeal, defendant asserts his post-conviction counsel did not provide a reasonable level of assistance because counsel

failed to amend his petition to include an allegation that his appellate counsel was ineffective for not arguing on direct appeal that trial counsel was ineffective for failing to seek suppression of the identification testimony. Absent an added allegation of appellate counsel's ineffectiveness, the claims of trial counsel's ineffectiveness in the petition are necessarily waived.

The Post-Conviction Hearing Act (the Act) (725 ILCS 5/122-1 *et seq.* (West 2008)) provides a remedy to criminal defendants who claim that substantial violations of their federal or state constitutional rights occurred in their original trials. *People v. Taylor*, 237 Ill. 2d 356, 371-72 (2010). Any claim that could have been raised on direct appeal is waived in post-conviction proceedings. *People v. Sanders*, No. 109014, slip op. at 5 (Ill. Oct. 7, 2010).

At the second stage of post-conviction review, a defendant is entitled to the "reasonable" level of assistance from post-conviction counsel that is guaranteed by the Act. See *Greer*, 212 Ill. 2d at 204; *People v. McNeal*, 194 Ill. 2d 135, 142 (2000). The duties of post-conviction counsel are set out in Rule 651(c), which requires counsel to complete three tasks: (1) consult with the defendant to ascertain his contentions of the deprivation of his rights; (2) examine the record of the trial proceedings; and (3) amend the defendant's initial petition as necessary "for an

adequate presentation" of his claims. Ill. S. Ct. R. 651(c) (eff. Dec. 1, 1984). Review of the dismissal of a post-conviction petition at the second stage of proceedings is *de novo*. *People v. Suarez*, 224 Ill. 2d 37, 42 (2007).

Defendant correctly maintains his post-conviction counsel's representation was unreasonable because counsel failed to amend his petition to include an allegation of the ineffectiveness of appellate counsel under the Illinois Supreme Court's controlling decision in *People v. Turner*, 187 Ill. 2d 406 (1999). In *Turner*, the supreme court held that post-conviction counsel did not meet the requirements of Rule 651(c) because counsel did not amend the defendant's *pro se* petition to allege the ineffectiveness of appellate counsel. *Turner*, 187 Ill. 2d at 413. The court held that counsel's failure to amend the petition to allege ineffective assistance of appellate counsel "precluded consideration of petitioner's claims on the merits and directly contributed to the dismissal of the petition without an evidentiary hearing." *Turner*, 187 Ill. 2d at 415.

We agree with defendant that *Turner* is dispositive of this appeal. Rule 651(c) requires counsel to make any changes necessary to adequately present the petitioner's contentions. Ill. S. Ct. R. 651(c) (eff. Dec. 1, 1984). Defendant did not receive the reasonable level of assistance of post-conviction counsel required by the Act. Accordingly, the circuit court's

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order granting the motion to dismiss defendant's post-conviction petition is reversed, and this case is remanded to allow defendant to replead his post-conviction petition with the assistance of counsel.

Reversed and remanded with directions.