

2011 IL App (1st) 093004-U
No. 1-09-3004

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).

SIXTH DIVISION
July 22, 2011

IN THE
APPELLATE COURT OF ILLINOIS
FIRST JUDICIAL DISTRICT

THE PEOPLE OF THE STATE OF ILLINOIS,)	Appeal from the
)	Circuit Court of
Plaintiff-Appellee,)	Cook County.
)	
v.)	No. 00 CR 12822
)	
DORIS STERLING,)	Honorable
)	Michael Brown,
Defendant-Appellant.)	Judge Presiding.

JUSTICE McBRIDE delivered the judgment of the court.
Presiding Justice Garcia and Justice R. E. Gordon concurred
in the judgment.

O R D E R

HELD: Remandment for compliance with Supreme Court Rule 651(c) (eff. Dec. 1, 1984) is not necessary where initial post-conviction counsel filed a written certificate of compliance and the record reflects that succeeding post-conviction counsel met the rule's requirements.

¶ 1 Defendant Doris Sterling appeals from the dismissal, on motion of the State, of his petition for post-conviction relief.

On appeal, defendant contends that his case must be remanded because post-conviction counsel did not file a certificate pursuant to Supreme Court Rule 651(c) (eff. Dec. 1, 1984) and the record does not affirmatively show that counsel consulted with him to ascertain the basis of all his constitutional claims. For the reasons that follow, we affirm.

¶ 2 Following a 2003 jury trial, defendant was convicted of first degree murder and robbery. The trial court found defendant eligible for the death penalty, but sentenced him to a term of 70 years' imprisonment for first degree murder and an extended term of 14 years' imprisonment for robbery. On direct appeal, this court affirmed defendant's convictions, but vacated his robbery sentence and remanded for resentencing. *People v. Sterling*, 357 Ill. App. 3d 235, 255 (2005). The trial court subsequently resentenced defendant to a non-extended term of seven years' imprisonment for robbery.

¶ 3 In 2006, defendant filed a *pro se* petition for post-conviction relief and an amended *pro se* petition for post-conviction relief. The trial court appointed counsel. In 2009, Assistant Public Defender (APD) Michael Davidson filed an amended petition on defendant's behalf. APD Davidson also filed a Rule 651(c) certificate, stating that he had communicated with defendant to ascertain his claims of deprivations of his constitutional rights; examined the trial transcripts, decision

on direct appeal, *pro se* petitions, and related documents; and conducted further investigation and reviewed applicable law before preparing and filing an amended petition that adequately presented defendant's claims.

¶ 4 Two months later, APD Harold Winston appeared in court on defendant's behalf. Winston explained to the court that he had been supervising APD Davidson. Defendant had complained to Davidson that he was unhappy with the attorney-drafted amended petition, and Davidson asked Winston to look into the matter. Winston spoke on the telephone with defendant, who "listed a number of contentions." Winston indicated to the court that he did not think the contentions were going to "prove out," but that he needed a few more weeks to resolve the situation.

¶ 5 At the next court call, APD Winston again noted that defendant had complained about the amended petition that had been filed by APD Davidson because it did not include issues that he had raised in his *pro se* amended petition. Winston stated that he believed those issues to be "borderline," and indicated that if he had been assigned the case initially, he would have included them in a supplemental petition or would have incorporated by reference the entire *pro se* amended petition. Winston then asked for leave of court to incorporate the *pro se* amended petition by reference and the State objected.

¶ 6 During the ensuing discussion, Winston stated that he thought he would be taking over the case from Davidson. In response, the assistant State's Attorney asked whether he would be filing a new 651(c) certificate. The trial court interjected, "It's already been filed." Winston answered, "I don't think that's necessary by just adding one sentence," and the trial court agreed, noting again that a certificate was on file. The trial court then continued the case to allow Winston time to decide whether or not he would file an amended petition.

¶ 7 On the next court date, the trial court granted leave for APD Winston to file an addendum to the amended post-conviction petition. The written addendum provided, in relevant part, "Petitioner hereby incorporates by reference the issues, facts and legal argument in his *pro se* Amended Petition for Post-Conviction Relief." The trial court and APD Winston briefly discussed Rule 651(c) as follows:

"THE COURT: Now, with that are you going to file an amended 651(c) petition [*sic*] or do you feel that the 651(c) petition [*sic*] is sufficient as it stands?

MR. WINSTON: I feel it's sufficient but I will add for the record that I have reviewed the entire transcript and I have consulted with the client, which are

basically the things in 651, and I feel the amended petition with this addendum, you know, represents his issues that -- giving it the oral equivalent of the 651(c)."

The State filed a motion to dismiss, which, following a hearing, was granted by the trial court.

On appeal, defendant contends that his case must be remanded for compliance with Supreme Court Rule 651(c) (eff. Dec. 1, 1984). Defendant asserts that APD Winston did not comply with the rule where he did not file a Rule 651(c) certificate and the record does not affirmatively show that he consulted with defendant to ascertain the basis of all his constitutional claims. Defendant argues that in the absence of Rule 651(c) compliance, the order dismissing his petition must be vacated and the cause remanded.

¶ 8 When counsel is appointed in post-conviction proceedings, a defendant is entitled to his reasonable assistance. *People v. Suarez*, 224 Ill. 2d 37, 42 (2007). Supreme Court Rule 651(c) imposes requirements on post-conviction counsel in order to ensure this reasonable level of assistance. *Suarez*, 224 Ill. 2d at 42. Specifically, Rule 651(c) requires that the record show that post-conviction counsel consulted with the defendant either by mail or in person to ascertain his contentions of deprivation of constitutional rights, examined the

trial record, and made amendments to the *pro se* petition which were necessary for an adequate presentation of the defendant's contentions. The rule provides that this showing may be made by filing a certificate of compliance. Such a certificate creates a presumption of compliance that can be rebutted by the record. *People v. Marshall*, 375 Ill. App. 3d 670, 680 (2007). In the absence of a written certificate, the record must explicitly show that the rule's requirements have been met. *People v. Myers*, 386 Ill. App. 3d 860, 865 (2008).

¶ 9 In support of his contentions, defendant relies upon cases where counsel completely failed to file a Rule 651(c) certificate. See *Suarez*, 224 Ill. 2d at 40; *People v. Johnson*, 338 Ill. App. 3d 1004, 1008 (2003). The instant case is factually distinguishable, as there is no question that a written certificate was filed by APD Davidson. Defendant does not contest the sufficiency of this Rule 651(c) certificate. Rather, he maintains that APD Winston was required to file an additional certificate or make an explicit showing that he had complied with the rule.

¶ 10 The addendum filed by APD Winston was, in substance, one sentence indicating that the amended petition would incorporate by reference the *pro se* amended petition. The trial court agreed with Winston that such circumstances did not necessitate the filing of a new Rule 651(c) certificate.

Nevertheless, Winston stated on the record that he consulted with defendant, reviewed the entire transcript, and had prepared an addendum that, combined with the amended petition, represented defendant's claims. In addition, during earlier court calls, APD Winston informed the trial court that he had a telephone conversation with defendant during which defendant "listed a number of contentions," and that defendant was upset because APD Davidson had not included issues he had raised in his *pro se* petitions. Thus, the record affirmatively shows that APD Winston consulted with defendant and ascertained his contentions, examined the trial record, and amended the petition so as to adequately present defendant's claims. In our view, APD Winston fulfilled his duties under Rule 651(c) and provided defendant with a reasonable level of assistance. Defendant's contention fails.

¶ 11 For the reasons explained above, we affirm the judgment of the circuit court of Cook County.

¶ 12 Affirmed.