



possession of a weapon by a felon (720 ILCS 5/24–1.1(a) (West Supp. 1999)). Both attempt first degree murder and aggravated battery with a firearm are Class X felonies and unlawful possession is a Class 3 felony.

¶ 5 On January 19, 2000, a sentencing hearing was held. The conviction of aggravated battery with a firearm merged into the conviction of attempt first degree murder. The trial court then sentenced defendant to concurrent terms of 30 years' imprisonment for attempt first degree murder and 5 years' imprisonment for unlawful use of a weapon by a felon. The court noted defendant would have to serve 85%, or 25.5 years, of his 30-year sentence.

¶ 6 On January 19, 2000, defense counsel filed a motion to reconsider sentence. On January 26, 2000, defendant filed a *pro se* motion to reconsider sentence. On February 1, 2000, the trial court heard and denied both motions.

¶ 7 Defendant filed a timely notice of appeal and OSAD was appointed to represent him. On October 3, 2002, this court affirmed defendants' convictions and sentences. *People v. Williams*, No. 4–00–0119 (Oct. 3, 2002) (unpublished order under Supreme Court Rule 23).

¶ 8 On December 3, 2002, defendant filed a *pro se* petition for post-conviction relief and an amended petition was filed by appointed counsel on July 22, 2003.

¶ 9 On January 23, 2004, counsel filed a corrected supplement and amendments to the petition. On March 5, 2004, the trial court dismissed the petition without an evidentiary hearing following a motion to dismiss by the State, *i.e.*, a second-stage dismissal.

¶ 10 Defendant appealed the dismissal of his post-conviction petition and OSAD was appointed to represent him. Counsel filed a motion to withdraw accompanied by a brief in conformity with the requirements of *Pennsylvania v. Finley*, 481 U.S. 551 (1987). On June 8,

2005, this court allowed OSAD's motion to withdraw and affirmed the trial court's judgment. *People v. Williams*, No. 4-04-0275 (June 8, 2005) (unpublished order under Supreme Court Rule 23).

¶ 11 On January 5, 2009, defendant filed a *pro se* combination petition for post-conviction relief, complaint for habeas corpus relief, and a motion for relief from judgment. He raised a single issue, arguing that portion of his sentence between 15 and 30 years' imprisonment was void because Public Act 88-680, under which he had been sentenced, was held unconstitutional in *People v. Cervantes*, 189 Ill. 2d 80, 98, 723 N.E.2d 265, 274 (1999). Defendant argued *Cervantes* had increased the sentencing range for attempt (first degree murder) from 4-to-15 years' imprisonment to 6-to-30 years' imprisonment.

¶ 12 On April 8, 2009, the trial court appointed counsel to represent defendant. On April 27, 2009, the State filed a motion to dismiss defendant's petitions for collateral relief, arguing the petition for relief under the Post-Conviction Hearing Act (725 ILCS 5/122-1 *et seq.* (West 2008)) was untimely as was the motion for relief from judgment under section 2-1401(c) of the Code of Civil Procedure (735 ILCS 5/2-1401(c) (West 2008)) and there was no basis for defendant to be released from custody under the provisions for Habeas Corpus relief (735 ILCS 5/10-123(2) (West 2008)).

¶ 13 On July 31, 2009, appointed counsel filed a Rule 651(c) (Ill. S. Ct. R. 651(c) (eff. Dec. 1, 1984)) certificate and a motion for leave to withdraw as counsel with a brief in support of his motion. Counsel argued defendant's collateral claim was unavailing because the law existing prior to the passage of P.A. 88-680 also provided a sentencing range of 6-to-30 years' imprisonment for attempt (first degree murder).

¶ 14 On August 31, 2009, defendant filed a *pro se* response to counsel's motion. He conceded counsel's argument but asserted a new claim he should only have to serve 50% of his sentence because P.A. 88–680, which had been declared unconstitutional, enacted truth-in-sentencing and the provision he serve 85% of his sentence.

¶ 15 On November 18, 2009, the State filed a memorandum in support of its motion to dismiss arguing the sentencing range for attempt (first degree murder) and the good-time provisions applicable to that offense were the same under P.A. 88–680 and the preceding public act 87–921. On December 11, 2009, defendant filed a *pro se* reply and memorandum insisting P.A. 88–680 instituted truth-in-sentencing.

¶ 16 On January 10, 2010, a hearing was held at which the trial court heard arguments from defendant, his appointed counsel and the State. At the conclusion of the hearing, the court granted both counsel's motion to withdraw and the State's motion to dismiss.

¶ 17 On February 2, 2010, defendant filed a timely notice of appeal and OSAD was appointed to represent him. OSAD has filed a motion to withdraw as counsel under *Finley*, asserting no issues of arguable merit warrant appeal. The record shows service of the motion on defendant. On our own motion, we granted defendant leave to file additional points and authorities by February 10, 2011. He has filed none. After examining the record in accordance with our duties under *Finley*, we affirm the trial court's judgment and grant OSAD's motion to withdraw as counsel on appeal.

¶ 18 II. ANALYSIS

¶ 19 OSAD argues no colorable argument can be made the trial court erred by striking defendant's successive petition. Specifically, OSAD contends the court's findings and conclu-

sions are supported by the law and by the facts of this case.

¶ 20 A. Standard of Review

¶ 21 A dismissal of a post-conviction petition without an evidentiary hearing is reviewed *de novo*. *People v. Coleman*, 183 Ill. 2d 366, 388-89, 701 N.E.2d 1063, 1075 (1998).

¶ 22 The only claim raised by defendant in his 2009 collateral petitions is that portion of his prison sentence for attempt (first degree murder) in excess of 15 years was void because the public act increasing the sentencing range for attempt (first degree murder) from 4-to-15 years to 6-to-30 years was held unconstitutional in *Cervantes*. This claim was properly rejected by the trial court because, while P.A. 88-680 was struck down by *Cervantes*, it had no impact on defendant's sentence.

¶ 23 P.A. 88-680 amended the attempt statute to increase the sentencing range for certain attempt (murders), containing the aggravating factors found in section 9-1 of the Criminal Code of 1961 (720 ILCS 5/9-1(b), 8-4(c)(1) (West 1994)) (victim was police officer, fireman, correctional institution employee, or more than one victim) from 15-to-60 years to 20-to-80 years. But it did not alter the pre-existing 6-to-30 years sentencing range for all other attempt (murders). See 720 ILCS 5/8-4(c)(1); 730 ILCS 5/5-8-1(a)(3) (West 1994). Defendant's attempt (first degree murder) conviction was not for an offense containing one of the specified aggravating factors. Therefore, P.A. 88-680 never changed the sentencing range for his offense and when the act was found unconstitutional under *Cervantes* it had no impact on defendant's sentence.

¶ 24 Defendant actually acknowledged his claim was meritless in his response to appointed counsel's motion to withdraw but raised the issue of whether P.A. 88-680 had enacted

the so-called truth-in-sentencing law requiring him to serve 85% of his 30-year sentence and, because it was found unconstitutional, he should only have to serve 50% of his sentence.

¶ 25 Defendant contends truth-in-sentencing did not exist prior to P.A. 88–680, which had an effective date of January 1, 1995. This is true; however, it was actually enacted August 20, 1995, the effective date of P.A. 89–404 which enacted truth-in-sentencing. Although P.A. 89–404 was found unconstitutional in *People v. Reedy*, 186 Ill. 2d 1, 18, 708 N.E.2d 1114, 1122 (1999), the truth-in-sentencing provisions were re-enacted in P.A. 90–592 with an effective date of June 19, 1998. Thus, the provisions were in place when defendant committed his offense in February 1999. Thus, *Reedy* does not help him, and he must serve 85% of his 30-year sentence. The trial court was correct in rejecting all of his claims.

¶ 26 Finally, defendant complained appointed counsel did not fulfill all of his obligations under Illinois Supreme Court Rule 651(c) (eff. Dec. 1, 1984). He argued counsel failed to tell him the claim he raised in his petitions was frivolous before counsel filed his motion to withdraw.

¶ 27 Rule 651(c) requires counsel representing a defendant in proceedings under the Post-Conviction Hearing Act consult with the defendant to ascertain his contentions of deprivation of constitutional rights, examine the trial transcripts and make any amendments to the *pro se* petition necessary for an adequate presentation of the defendant's claims. The record contains letters between defendant and counsel showing counsel met with defendant in person, reviewed his petitions and discussed them with defendant, suggested they might need to be amended, and complied with defendant's wish the petitions not be amended. These actions were all taken prior to filing the motion to withdraw and notifying defendant by letter of his reasons for moving to

withdraw. Thus, counsel did comply with Rule 651(c). Further, appointed counsel in a post-conviction proceeding is actually prohibited by ethical obligations from continuing to represent a postconviction defendant when he has determined defendant's claims to be frivolous and patently without merit. *People v. Greer*, 212 Ill. 2d 192, 209, 817 N.E.2d 511, 522 (2004).

¶ 28 After carefully reviewing the trial court record and the trial court's reasoning and conclusions, we find the court properly dismissed the petition upon the State's motion and OSAD's motion to withdraw as counsel on appeal is granted.

¶ 29 III. CONCLUSION

¶ 30 For the reasons stated, we affirm the trial court's judgment. As part of our judgment, we grant the State its statutory assessment of \$50 against defendant as costs of this appeal. The clerk is authorized to prepare the mandate.

¶ 31 Affirmed.