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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 County.
	)	
v.	)	No. 05 CR 13949
	)	
ADENIKE ADEBIYI,	)	Honorable
	)	John Joseph Hynes,
Defendant-Appellant.	)	Judge Presiding.

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JUSTICE ROCHFORD delivered the judgment of the court.  
Justices Hall and Karnezis concurred in the judgment.

**ORDER**

- ¶ 1 **Held:** Second-stage dismissal of defendant's post-conviction petition affirmed over claim that counsel failed to provide reasonable assistance pursuant to Rule 651(c).
- ¶ 2 Defendant, Adenike Adebisi, appeals from the second-stage dismissal of her *pro se* petition for relief under the Post-Conviction Hearing Act (Act). 725 ILCS 5/122-1 *et seq.* (West 2010). Defendant contends her post-conviction counsel (counsel) failed to provide her with reasonable assistance under Illinois Supreme Court Rule 651(c) (Ill. S. Ct. R. 651(c) (eff. Dec. 1, 1984)) because her counsel did not amend her *pro se* post-conviction petition, did not provide a verification affidavit for that petition, and did not attach any supporting affidavits.
- ¶ 3 The record shows, in relevant part, that on August 30, 2006, a jury found defendant guilty of aggravated battery for biting a paramedic on the middle knuckle of his right hand following an altercation outside a CVS drugstore in Chicago Heights, Illinois. At trial, the victim was shown two

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photographs of his hand, which were entered into evidence. The victim described a "very small scab" on his first knuckle, which predated the bite wound on his middle knuckle. Defendant testified she blacked out and did not remember biting anyone. The trial court sentenced defendant to two years' probation, and this court affirmed that judgment on direct appeal. *People v. Adebisi*, No. 1-06-2800 (2008) (unpublished order under Supreme Court Rule 23).

¶ 4 On May 27, 2008, defendant filed a *pro se* petition for post-conviction relief alleging ineffective assistance of trial counsel. Her allegations are as follows:

"The picture of the bite that was shown during the trial does not match my mouth. If the jury had known this, they would not have found me guilty. My constitutional rights were violated because my trial attorney was ineffective for not making this point. I would like a copy of the picture of the bite. This is because the picture had wounds that already had scabs and other indications that portrayed this wound as old."

¶ 5 That same day, defendant also filed a *pro se* petition for relief from judgment under section 2-1401 of the Code of Civil Procedure (Code) ((735 ILCS 5/2-1401 (West 2010)), in which she alleged she would have been exonerated if the jury had seen certain evidence, namely a camcorder and cell phone, that had been confiscated from her.

¶ 6 Thereafter, counsel was appointed to represent defendant, and her post-conviction petition was advanced to the second stage. The report of proceedings shows counsel spent months trying to obtain transcripts, photographs used by the State at trial, and the confiscated cell phone and camcorder, in order to fulfill her duties under Rule 651(c), and determine whether a supplemental or amended petition should be filed. Ill. S. Ct. Rule 651(c) (eff. Dec. 1, 1984).

¶ 7 On January 29, 2010, counsel filed a Rule 651(c) certificate in which she stated, *inter alia*, that she had consulted with defendant in person, by letter, and by phone, had examined the trial record and trial file, and had "thoroughly examined, in good faith, the Petitioner's *pro se* Petition for

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Post Conviction Relief and as it adequately presents her issues, a supplemental petition will not be presented." Counsel also stated she would "proceed no further" on defendant's section 2-1401 petition because defendant refused, in open court, to have it treated as a post-conviction petition. On March 19, 2010, the State filed a motion to dismiss defendant's petitions, asserting, with respect to the post-conviction petition, that her claims were speculative, and she failed to support them with any evidence.

¶ 8 On April 5, 2010, while the State's motion was pending, defendant filed a *pro se* "Emergency Motion to request court to set date for hearing on 2-1401 petition." Defendant asserted, *inter alia*, she had "not been able to communicate with the court appointed counsel," that counsel "refused to pick up the second petition and also refused to file amended complaint as promised," and no one "has contacted me regarding status or any issues regarding one of the petitions since January 2009." On April 16, 2010, the court marked the letter "received" and continued the case to May 14, 2010, the date previously set for argument on the State's motion to dismiss.

¶ 9 On April 23, 2010, defendant filed a *pro se* "Emergency petitioners [*sic*] motion to transfer both petitions out of Judge Hynes courtroom and out of the Bridgeview courthouse." In that motion, defendant stated, *inter alia*, she "has been unsuccessful in communicating with the court appointed counsel" and referred to "attached copies of email correspondence" which were not attached to the motion. Defendant continued:

"The attorney had refused to discuss my grievances with me. The initial petitioned [*sic*] filed were not framed in a professionally drafted manner. Ms. Sanders [counsel] was supposed to file an affidavit on my behalf and attach necessary facts to support both claims. This attorney has refused to ascertain my contention of deprivation of constitutional rights and due process of law. She has not conferred with me and hence my contentions were not adequately represented."

¶ 10 Defendant then alleged an assistant State's attorney (ASA) had perjured himself at her trial,

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and that defendant's bite imprint would not match the images in two photographs that "were not discovered previously."

¶ 11 At the motion hearing on May 14, 2010, the court sought to confirm counsel still represented defendant, and counsel responded:

"I did have a discussion with my client about my withdrawal. She insists that I continue on with this case. Therefore, I'm not going to withdraw. I know that she has been writing letters to the court and she has filed some motions without my authorization and I have tried to input her. She does not listen to me. So we have a breakdown in communication. However, I'm going to continue with this case. I have filed my 651-C and I'll take this case to resolution."

¶ 12 Then, after the State argued its motion to dismiss, counsel informed the court she had numerous consultations with defendant, stating:

"[T]he issues that are important to her that she wanted raised are as follows: Ineffective assistance of counsel in that counsel failed to present medical evidence, testimony or reports, and I believe she is referring to a full mouth bite analysis. \*\*\* [a]lso ineffective assistance of counsel in failing to present expert testimony regarding the bite marks. Ineffective assistance of counsel in that the attorney did not use the report in the cross examination of the victim. Poor cross examination by the attorney of record who she states abandoned everything."

¶ 13 Counsel also informed the court that defendant claimed an ASA had perjured himself at her trial, and her right to due process was violated because a camcorder and cell phone with evidence on them had not been returned to her. However, counsel noted she declined to proceed on either of those claims after speaking with the ASA before his death, and reviewing the evidence on the camcorder and cell phone. Finally, counsel reiterated the certifications she had made in her Rule 651(c) certificate, and noted defendant was seeking denial of the State's motion to dismiss and a new

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trial.

¶ 14 The court initially found defendant failed to meet the threshold requirements of a section 2-1401 petition, in that it was "merely five lines in length," unsupported by affidavit, and did not set forth due diligence or a meritorious claim or defense. 735 ILCS 5/2-1401 (West 2010). As a result, the court denied the petition.

¶ 15 The court then addressed defendant's post-conviction petition, noting it was only "four lines" and "woefully fails to even set forth a minimum showing" of ineffective assistance of trial counsel. The court also noted, "the oral allegations that Ms. Sanders has indicated that the defendant wanted her to bring up to the Court, none of these are contained in a post conviction petition." The court acknowledged counsel had acted "diligently and competently" in investigating defendant's claims which "have not warranted her to amend the post conviction petition," found the oral claims not presented in the petition were waived, and noted those claims were also "not meritorious in that they—there is no substance. They are not supported by affidavits as required by the statute." The court then granted the State's motion to dismiss defendant's post-conviction petition.

¶ 16 In this appeal, defendant makes no argument with regard to the dismissal of her section 2-1401 petition, and solely challenges the dismissal of her post-conviction petition. She contends post-conviction counsel rendered unreasonable assistance where counsel did not amend her *pro se* post-conviction petition, did not provide a verification affidavit for that petition, or attach supporting affidavits, thus failing to fulfill her obligations under Rule 651(c). (Ill. S. Ct. R. 651(c) (eff. Dec. 1, 1984)). The dismissal of a petition without an evidentiary hearing is subject to plenary review. *People v. Coleman*, 183 Ill. 2d 366, 387-88 (1998).

¶ 17 We observe that the right to post-conviction counsel is a matter of legislative grace, and a post-conviction petitioner is only entitled to a reasonable level of assistance. *People v. Thompson*, 383 Ill. App. 3d 924, 931 (2008). Rule 651(c) imposes specific duties on post-conviction counsel to ensure she provides that level of assistance. Ill. S. Ct. R. 651(c) (eff. Dec. 1, 1984); *People v.*

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*Suarez*, 224 Ill. 2d 37, 42 (2007). Rule 651(c) requires post-conviction counsel consult with a defendant to ascertain her contentions of the deprivation of constitutional rights, examine the record of the proceedings at trial, and make any amendments to defendant's *pro se* petition that are necessary for an adequate presentation of her contentions. Ill. S. Ct. R. 651(c) (eff. Dec. 1, 1984).

¶ 18 Compliance with Rule 651(c) may be shown by the filing of a certificate representing counsel has fulfilled her duties. *People v. Perkins*, 229 Ill. 2d 34, 50 (2007). Once the certificate is filed, the presumption exists that defendant received the required representation during second-stage proceedings. *People v. Mendoza*, 402 Ill. App. 3d 808, 813 (2010).

¶ 19 In this case, post-conviction counsel filed a Rule 651(c) certificate on January 29, 2010, thereby creating a presumption that defendant received the representation required by the rule during second-stage proceedings. *Id.* In addition, defendant does not dispute counsel examined the record of the proceedings at trial and consulted with her to ascertain her contentions of deprivation of constitutional right. Rather, she solely contends counsel failed to "shape" her claims into adequate legal form.

¶ 20 We initially note, post-conviction counsel is not required to amend defendant's *pro se* post-conviction petition. *People v. Turner*, 187 Ill. 2d 406, 412 (1999). To the contrary, the decision of appointed counsel to not amend defendant's *pro se* petition has been held to not constitute a deprivation of adequate representation where her claim lacks a sufficient factual basis. *People v. Johnson*, 17 Ill. App. 3d 277, 279 (1974) (citing *People v. Stovall*, 47 Ill. 2d 42 (1970)). We find the instant case to be such a case.

¶ 21 The record shows defendant filed a *pro se* post-conviction petition alleging trial counsel was ineffective for failing to argue that the picture of the bite wound displayed at her trial did not "match" her mouth. As the basis for this proposed argument, defendant stated: "the picture had wounds that already had scabs and other indications that portrayed this wound as old." This was clearly an insufficient basis for making the proposed argument.

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¶ 22 Contrary to defendant's claim, the trial record shows the scabbing referred to by defendant, was on the first knuckle of the victim's right hand, it predated the bite wound on his middle knuckle, and was, thus, separate from and unrelated to the bite marks, which defendant now alleges do not "match" her mouth. We also presume the "other indications" referred to by defendant offer no support for her claim, as she does not dispute counsel consulted with her regarding her contentions, and nothing more was added to her *pro se* petition to clarify this vague term. *Mendoza*, 402 Ill. App. 3d at 813. In sum, there is no factual basis for defendant's claim, and we find counsel cannot be charged with incompetence for deciding not to amend defendant's *pro se* petition which contained allegations that were without substance. *Johnson*, 17 Ill. App. 3d at 279.

¶ 23 Defendant, nonetheless, claims counsel violated Rule 651(c) by failing to file an amended post-conviction petition that included the oral arguments she made at the motion-to-dismiss hearing, and the claims asserted by defendant in her emergency motions. We disagree. First, the "oral arguments" referred to by defendant are merely the claims that counsel informed the court that defendant wanted counsel to raise, and counsel did not argue any of them during the hearing. Second, the supreme court has expressly held counsel has no obligation to address issues that were not raised in defendant's *pro se* petition (*People v. Pendleton*, 223 Ill. 2d 458, 76 (2006)), and here, counsel's "oral arguments" and the claims defendant made in her emergency motions, did not appear in defendant's original *pro se* petition. Thus, counsel was not required to present them. *People v. Davis*, 156 Ill. 2d 149, 164 (1993).

¶ 24 Defendant also maintains counsel violated Rule 651(c) by failing to provide a verification affidavit for her initial *pro se* petition, which was filed without one. In support of this claim, defendant refers to *People v. Carr*, 407 Ill. App. 3d 513 (2011), in which the Second District held defendant is not entitled to relief under the Act where the verification affidavit she filed is unnotarized. *Id.* at 516. We note that post-*Carr*, the Second District has further held, post-conviction counsel provides unreasonable assistance where she fails to remedy the lack of a

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notarized verification affidavit. *People v. Nitz*, 2011 IL App (2d) 100031, ¶ 19.

¶ 25 This court, however, is not required to follow the decisions of other districts (*Stein v. Krislov*, 405 Ill. App. 3d 538, 542 (2010)), and we have recently disagreed with the ruling in *Carr*, holding in *People v. Henderson*, 2011 IL App. (1st) 090923, that a post-conviction petition cannot be dismissed at the first stage of proceedings for lack of a verification affidavit. *Id.* at ¶ 36. In doing so, we found the lack of a notarized-verification affidavit bears no relation to the substantive merit of defendant's alleged constitutional claim, and, further, the State has an opportunity to object to this deficiency at the second stage of proceedings at which time appointed counsel can correct it. *Id.* at ¶ 35.

¶ 26 Here, the State did not object to defendant's failure to supply a verification affidavit in its motion to dismiss, thus waiving the procedural defect during the second-stage proceedings. See *People v. Bocclair*, 202 Ill. 2d 89, 101-02 (2002) (waiving time limitation for filing). In any event, the lack of verification did not, otherwise, affect the sufficiency of defendant's allegations. See *Henderson*, 2011 IL App. (1st) 090923 at ¶ 34-35. Under these circumstances, a finding that counsel provided unreasonable assistance by not providing a verification affidavit would merely elevate form over substance, and we reject such a result as inconsistent with our ruling in *Henderson*.

¶ 27 Finally, defendant claims counsel provided unreasonable assistance by not procuring any affidavits to support her claim of ineffective assistance of counsel. We disagree. The sole basis for defendant's ineffective assistance of counsel claim, as alleged in her petition, was that the photograph of the bite marks used at trial showed scabbing and "other indications" the wound was old and, as discussed above, this was an insufficient factual basis for such a claim in light of the record. That being determined, counsel had no further duty under Rule 651(c) to actively search for sources, outside the record, that might support defendant's ineffective-assistance-of-counsel claim, or to discover evidence missing from the petition which, defendant claims, exists outside the record. *Mendoza*, 402 Ill. App. 3d at 817. We also find that attaching defendant's own self-serving affidavit

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as support for a baseless claim, as defendant proposes, was not required for counsel to satisfy her Rule 651(c) duties, especially where defendant was allegedly not even conscious at the time of the incident. See *People v. Miller*, 393 Ill. App. 3d 629, 639 (2009).

¶ 28 Having so found, we note that *Turner* and *People v. Waldrop*, 353 Ill. App. 3d 244 (2004), cited by defendant, are distinguishable from the case at bar and do not require a contrary ruling. In *Turner*, there was no indication that a Rule 651(c) certificate was filed, and the supreme court never applied the presumption of reasonable assistance. *Turner*, 187 Ill. 2d at 416. In *Waldrop*, the record showed that counsel was unaware of his duty to seek an affidavit from a witness who was specifically identified in defendant's *pro se* petition. *Waldrop*, 353 Ill. App. 3d at 250. Unlike those cases, counsel here filed a Rule 651(c) certificate which gave rise to the presumption she provided reasonable assistance, and defendant's *pro se* petition did not name anyone who could provide an affidavit to support her claim. We, therefore, conclude defendant has failed to overcome the presumption she received the reasonable assistance to which she was entitled at the second stage of proceedings (*Mendoza*, 402 Ill. App. 3d at 813), and affirm the order of the circuit court of Cook County dismissing her petition.

¶ 29 Affirmed.