

No. 1-10-1608

**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).

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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. 08 CR 13075
	)	
SPENCER WILLIAMS,	)	Honorable
	)	John J. Moran, Jr.,
Defendant-Appellant.	)	Judge Presiding.

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PRESIDING JUSTICE HOFFMAN delivered the judgment of the court.  
Justices Hall and Rochford concurred in the judgment.

**ORDER**

¶ 1 *Held:* Where defendant failed to make a substantial showing that his guilty plea was involuntary because he was unfit to plead guilty, and where post-conviction counsel filed a certificate pursuant to Supreme Court Rule 651(c) and defendant has not rebutted the presumption of compliance with the Rule, counsel provided a reasonable level of assistance and defendant's post-conviction petition was properly dismissed on motion of the State.

¶ 2 Defendant Spencer Williams appeals the trial court's dismissal, on motion of the State, of his post-conviction petition. On appeal, defendant contends that he made a substantial showing that his guilty plea was involuntary because he was suffering from post-traumatic stress disorder (PTSD) and was mentally unstable at the time of his plea, and that trial counsel was ineffective

for failing to request a fitness hearing. Defendant further contends that post-conviction counsel provided unreasonable assistance under Supreme Court Rule 651(c) (eff. Dec. 1, 1984) because counsel failed to amend his petition to clearly set forth his claims and failed to make amendments that would have preserved his claims against procedural bars. For the reasons that follow, we affirm.

¶ 3 On December 19, 2008, defendant pleaded guilty to one count of being an armed habitual criminal in exchange for a sentence of six years in prison. At the guilty plea hearing, defendant indicated that he understood the possible penalties and understood that he was giving up his rights to a trial, to confront witnesses, and present evidence. Defendant indicated that no one had threatened him or forced him to plead guilty, and that he had not been promised anything for his plea. When asked if he had any questions or wished to say anything to the court, defendant replied, "Right now, um, I'm testifying on two homicides. And I wish to be in protective custody." Defendant thereafter indicated that he understood his right to appeal.

¶ 4 On April 6, 2009, defendant filed a *pro se* post-conviction petition, alleging that (1) the police conducted an illegal search without a warrant; (2) the police violated a particular section of the Vehicle Code; (3) the motion to suppress evidence was not pursued; (4) he was not eligible to be sentenced as an armed habitual criminal; (5) he was misled by his attorney regarding the plea bargain and was made false promises by the State; and (6) he suffered from PTSD, was having flashbacks, was not mentally fit, and was not on proper medication at the time of his plea.

¶ 5 On October 9, 2009, post-conviction counsel filed a Rule 651(c) certificate in which he stated that he had consulted with defendant by mail and telephone to ascertain his contentions of deprivations of constitutional rights, had obtained and examined the report of proceedings from his guilty plea and conducted additional investigations, and had not prepared a supplemental petition because defendant's *pro se* petition adequately set forth his claims.

¶ 6 Thereafter, the State filed a motion to dismiss the petition, which was granted by the trial court. This appeal followed.

¶ 7 The Post-Conviction Hearing Act (Act) (725 ILCS 5/122-1 (West 2008)) provides a three-stage process by which defendants may assert that their convictions were the result of a substantial denial of their constitutional rights. *People v. Boclair*, 202 Ill. 2d 89, 99-100 (2002); *People v. Coleman*, 183 Ill. 2d 366, 378-79 (1998). The instant case involves the second stage of the post-conviction process. At this stage, dismissal is warranted when the petition's allegations, liberally construed in light of the trial record, fail to make a substantial showing of a constitutional violation. *Coleman*, 183 Ill. 2d at 382. At second-stage proceedings, all factual allegations not positively rebutted by the record are considered to be true. *People v. Hall*, 217 Ill. 2d 324, 334 (2005). Our review at the second stage is *de novo*. *Coleman*, 183 Ill. 2d at 388, 389.

¶ 8 Defendant's first contention on appeal is that his petition should not have been dismissed where he made a substantial showing that his guilty plea was involuntary because at the time he entered the plea, he was suffering from PTSD and was mentally unstable. Defendant argues that his claim was supported by attached documentation in the form of a "Mental Health Treatment Plan," signed by an Illinois Department of Corrections psychologist on January 26, 2009, indicating that defendant's treatment plan included the use of psychotropic medication, as determined appropriate by the treating psychiatrist. Defendant also claims that he was "on mental health probation at the time of this offense."

¶ 9 A defendant is presumed to be fit to stand trial, plead guilty, and be sentenced. 725 ILCS 5/104-10 (West 2008). He will be considered unfit for these purposes only where, due to his mental or physical condition, he is unable to understand the nature and purpose of the proceedings against him or to assist in his defense. 725 ILCS 5/104-10 (West 2008). The existence of a mental disturbance or the need for psychiatric care does not by itself raise a *bona*

*fide* doubt of fitness. *People v. Hanson*, 212 Ill. 2d 212, 224 (2004). A defendant may be fit for trial even if his mind is "otherwise unsound." *Hanson*, 212 Ill. 2d at 224-25.

¶ 10 In the instant case, defendant has failed to make a substantial showing that he was not able to understand the nature and purpose of the proceedings or to assist in his defense.

Defendant exhibited rational and competent behavior at the guilty plea hearing. He was responsive to the trial court, indicating through his answers that he understood the range of possible penalties he faced, understood he was giving up his rights to a trial, to confront witnesses, and present evidence, and understood his right to an appeal. He also indicated to the trial court that no one had threatened him or forced him to plead guilty and that he had not been promised anything for his plea. When defendant was given the opportunity to ask questions or say "anything," he asked to be placed in protective custody. Defendant's answers and comments at the hearing did not display any confusion about the nature of the proceedings. Thus, the transcript of the guilty plea hearing does not support defendant's claim that he was unfit to plead guilty. See *Hanson*, 212 Ill. 2d at 223-24 (interested, rational, and appropriate demeanor during pretrial proceedings did not provide evidence of *bona fide* doubt of the defendant's fitness).

¶ 11 Moreover, even if the existence of the need for psychiatric care would raise a *bona fide* doubt of fitness, the attachments to defendant's petition do not support his claim that he suffered from mental illness at the time he entered his plea. In arguing that he was mentally ill at the time of his plea, defendant claims in his brief that he was on "mental health probation." Nothing in the record supports this assertion other than defendant's own statement in a handwritten document that he had, at an unspecified time, received "special probation" for a charge of burglary to a car. Defendant further relies upon attached treatment plans that were developed by a psychiatrist, Dr. Daniel Brooks, and a psychologist, Dr. Norine Ashley, approximately one month after his plea. In the treatment plans, Dr. Ashley indicated that defendant should receive

mental health services and medication, as determined appropriate by the treating psychiatrist, and Dr. Brooks prescribed antidepressant medication to alleviate depressive symptoms. While these treatment plans point to a diagnosis of depression a month after defendant pleaded guilty, they do not support defendant's assertion that he suffered from PTSD at the time of his plea, much less his assertion that the PTSD rendered him unfit.

¶ 12 More informative is a third document attached to defendant's *pro se* pleadings: a mental health intake evaluation form completed by Richard Ibe, Ph.D., five days after defendant pleaded guilty. In the form, Dr. Ibe wrote that defendant reported no prior treatment for mental health or emotional issues, made no indication of depression or feeling anxious, reported no prior attempts to harm himself or recent thoughts of self harm, and had no current thoughts of harming others. Defendant's behavior was cooperative, his mood and affect were within normal limits, he was alert, and he was oriented to person, place, and time. Dr. Ibe wrote that defendant presented with a "stable mental status," that "there is no determined need for mental health services at this time based on the clinical information available to the examiner," that defendant "denied current suicidal / homicidal thought / plan and need for mental health services," and that defendant "did not appear to require mental health services at this time." Because Dr. Ibe saw defendant a mere five days after the guilty plea, his evaluation of defendant comes closer to providing a picture of defendant's mental state at the time of the plea. Dr. Ibe's evaluation does not support a finding that defendant suffered from mental illness when he pleaded guilty in the instant case.

¶ 13 We are mindful of defendant's argument that this court should not consider the evidentiary merits of his claim of unfitness because such considerations should be reserved for third-stage evidentiary hearings. However, we cannot agree that it is inappropriate for us to look at the documents defendant has attached to his petition and decide whether they support his claims. Section 122-2 of the Act requires that a post-conviction petition be accompanied by

"affidavits, records, or other evidence supporting its allegations or shall state why the same are not attached." 725 ILCS 5/122-2 (West 2008). The purpose of requiring such attachments is to show that the defendant's verified allegations are capable of objective or independent corroboration. *People v. Collins*, 202 Ill. 2d 59, 67 (2002). Without support in the record or attachments, post-conviction allegations may not advance to a third-stage evidentiary hearing. *Coleman*, 183 Ill. 2d at 381

¶ 14 Here, the attachments to defendant's petition do not support defendant's claim that he suffered from a mental illness, PTSD or otherwise, that left him unfit at the time he pleaded guilty. The closest we have to an evaluation of defendant's mental health at the time of his plea is Dr. Ibe's report five days after the plea, and that report points to no mental impairment. Dr. Ashley's and Dr. Brooks' treatment plans, which were developed a month after the guilty plea was entered and do not purport to diagnose defendant's mental state at the time of his plea, suggest only a diagnosis of depression, not the PTSD defendant now claims impaired him. Even if we were to extrapolate from the treatment plans that defendant may have been depressed at the time of the guilty plea, such circumstances do not establish that defendant was unfit to plead guilty. *People v. Harris*, 206 Ill. 2d 293, 305 (2002) (the mere fact that a defendant suffers from mental impairments does not necessarily establish that he is unfit).

¶ 15 Here, the record positively rebuts defendant's claim that he was unfit to plead guilty. The transcript of the hearing shows that defendant understood the nature and purpose of the proceedings. He did not display any irrational or odd behavior in court, and did not report any difficulties when given the opportunity to speak to the court. The documents attached to his petition do not support the claim that at the time of his plea, he suffered from mental illness that impeded his ability to understand the nature and purpose of the proceedings or to assist in his

defense. In these circumstances, we conclude that defendant has failed to make a substantial showing that he was unfit to plead guilty.

¶ 16 In a related argument, defendant asserts that the trial court erred in dismissing his petition because trial counsel was ineffective for failing to request a fitness hearing where there was a *bona fide* doubt of his fitness to plead guilty. This claim was not included in the petition for post-conviction relief and therefore is waived. 725 ILCS 5/122-3 (West 2008). Waiver aside, defendant's argument fails. For a claim of ineffectiveness based on failure to file a motion for a fitness hearing to succeed, a defendant must show that if he had received a hearing to which he was entitled, he would have been found unfit. *People v. Hayden*, 338 Ill. App. 3d 298, 314 (2003). We have already determined that defendant has not pleaded facts which would overcome the presumption of fitness. Accordingly, a claim of ineffectiveness of trial counsel for failing to request a fitness hearing would not succeed.

¶ 17 Defendant's second contention on appeal is that post-conviction counsel provided unreasonable assistance under Supreme Court Rule 651(c) (eff. Dec. 1, 1984) because counsel failed to amend his petition to clearly set forth his claims and failed to make amendments that would have preserved his claims against procedural bars raised by the State in its motion to dismiss. Specifically, defendant argues that counsel should have amended the petition to include allegations of ineffective assistance of trial counsel for failing to pursue defendant's motion to quash arrest and suppress evidence and for failing to request a fitness hearing.

¶ 18 Under the Act, petitioners are entitled to a "reasonable" level of assistance of counsel. *People v. Perkins*, 229 Ill. 2d 34, 42 (2007). To ensure this level of assistance, Rule 651(c) imposes three duties on appointed post-conviction counsel. *Perkins*, 229 Ill. 2d at 42. Pursuant to the rule, either the record or a certificate filed by the attorney must show that counsel (1) consulted with the petitioner to ascertain his contentions of constitutional deprivations; (2)

examined the record of the trial proceedings; and (3) made any amendments to the filed *pro se* petitions necessary to adequately present the petitioner's contentions. Ill. S. Ct. R. 651(c) (eff. Dec. 1, 1984); *Perkins*, 229 Ill. 2d at 42. The rule's third obligation does not require counsel to advance nonmeritorious claims on defendant's behalf. *People v. Pendelton*, 223 Ill. 2d 458, 472 (2006); *People v. Greer*, 212 Ill. 2d 192, 205 (2004).

¶ 19 The purpose of Rule 651(c) is to ensure that post-conviction counsel shapes the defendant's claims into a proper legal form and presents them to the court. *Perkins*, 229 Ill. 2d at 44. Substantial compliance with the rule is sufficient. *People v. Richardson*, 382 Ill. App. 3d 248, 257 (2008). Our review of an attorney's compliance with a supreme court rule is *de novo*. *People v. Jones*, 2011 IL App (1st) 092529, ¶ 19.

¶ 20 The filing of a Rule 651(c) certificate gives rise to a rebuttable presumption that post-conviction counsel provided reasonable assistance. *Jones*, 2011 IL App (1st) 092529, ¶ 23. In the instant case, counsel filed a Rule 651(c) certificate. Thus, the presumption exists that defendant received the representation required by the rule. It is defendant's burden to overcome this presumption by demonstrating his attorney's failure to substantially comply with the duties mandated by Rule 651(c). *Id.*

¶ 21 Defendant has identified two claims that he asserts counsel should have included in a supplemental petition. Defendant argues that counsel should have amended the petition to include allegations of ineffective assistance of trial counsel for (1) failing to pursue the motion to quash arrest and suppress evidence and (2) failing to request a fitness hearing.

¶ 22 The first of these claims is indisputably without merit. Contrary to defendant's assertion that trial counsel failed to pursue the motion to quash arrest and suppress evidence, a hearing was held on the motion on November 26, 2008. At the hearing, trial counsel presented three witnesses, including a friend of defendant who testified as an occurrence witness, and argued to

the court that the motion should be granted. Given these circumstances, we cannot find that post-conviction counsel provided unreasonable assistance by failing to ensure that the trial court considered this meritless claim of ineffective assistance of trial counsel. As noted above, post-conviction counsel is not required by Rule 651(c) to advance nonmeritorious claims. *Greer*, 212 Ill. 2d at 205.

¶ 23 The second claim that defendant argues post-conviction counsel should have included in a supplemental petition is ineffective assistance of trial counsel for failing to request a fitness hearing. As discussed above, for a claim of ineffectiveness based on failure to file a motion for a fitness hearing to succeed, a defendant must show that if he had received such a hearing, he would have been found unfit. *Hayden*, 338 Ill. App. 3d at 314. We have already addressed the underlying substance of this claim at length, and determined that defendant has not pleaded facts which would overcome the presumption of fitness to enter a guilty plea. Accordingly, we cannot agree with defendant that post-conviction counsel was unreasonable in failing to make the claim defendant now suggests. Even if post-conviction counsel had attempted to include a claim of ineffectiveness of trial counsel for failing to request a fitness hearing, he would have been unable to establish prejudice. Defendant's argument fails.

¶ 24 In the instant case, post-conviction counsel filed a Rule 651(c) certificate, thus triggering the presumption of compliance with the Rule. Defendant has failed to rebut the presumption. Accordingly, we cannot find that counsel provided an unreasonable level of assistance. Dismissal of defendant's petition was proper.

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

¶ 26 Affirmed.