

No. 1-10-3054

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).

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. 02 CR 29740
)	
BOBBY CRAWFORD,)	Honorable
)	Thomas M. Davy,
Defendant-Appellant.)	Judge Presiding.

JUSTICE SALONE delivered the judgment of the court.
Justices Neville and Murphy concurred in the judgment.

ORDER

¶ 1 *Held:* Second-stage dismissal of defendant's *pro se* post-conviction petition affirmed over his claim that counsel failed to fulfill her obligations under Rule 651(c) and *Greer* in withdrawing as counsel.

¶ 2 Defendant Bobby Crawford appeals from the second-stage dismissal of his *pro se* petition for relief under the Post-Conviction Hearing Act (Act). 725 ILCS 5/122-1 *et seq.* (West 2010). He solely contends that post-conviction counsel failed to fulfill her obligations under Illinois Supreme Court Rule 651(c) (eff. Dec. 1, 1984) and *People v. Greer*, 212 Ill. 2d 192 (2004) in withdrawing as counsel.

¶ 3 The record shows, in relevant part, that defendant was found guilty of two counts of armed robbery following a 2005 bench trial, then sentenced to a single extended term of 48 years'

imprisonment. This court affirmed that judgment on direct appeal. *People v. Crawford*, No. 1-05-2471 (2006) (unpublished order under Supreme Court Rule 23).

¶ 4 On March 2, 2007, defendant filed a *pro se* petition for post-conviction relief alleging, essentially, that the trial court erred in finding that there was probable cause for his arrest, that trial counsel failed to effectively represent him at the hearing on his motion to quash arrest, and that appellate counsel was ineffective for failing to raise these issues on direct appeal. On April 27, 2007, the circuit court docketed defendant's post-conviction petition for second-stage proceedings and appointed counsel to represent him. Thereafter, defendant filed two *pro se* amended post-conviction petitions which were stricken by the court because he was represented by counsel.

¶ 5 On October 30, 2009, post-conviction counsel filed a motion for leave to withdraw pursuant to the supreme court's decision in *Greer*. In her written motion, counsel noted that defendant had filed three *pro se* post-conviction petitions, and that "[a]ll three petitions alleged basically the same two arguments," namely, that the statute under which defendant was indicted was void, and that he was arrested without probable cause. Counsel also addressed both claims on the merits. With respect to the issue of probable cause, counsel noted that a motion to quash defendant's arrest had been filed, then provided a brief summary of the pertinent testimony from the hearing on that motion, and that "[t]he court found probable cause to arrest." Counsel also concluded that "appellate counsel was not ineffective for failing to argue that Petitioner was arrested without probable cause. After a lengthy hearing, the trial court found the police had probable cause. Under the *Strickland* standard, appellate counsel was not ineffective."

¶ 6 Counsel argued her motion to withdraw before the court that same day and addressed defendant's claims that the statute under which he was indicted was void, and that his trial

counsel¹ was ineffective for failing to argue that there was no probable cause for his arrest. After doing so, she informed the court, "I'm not going to file a 651(c). But, I would like to put on the record that pursuant to the Illinois Supreme Court Rule 651(C), I did consult and have consulted with [defendant], by mail, on numerous occasions to ascertain his contentions of deprivation of his Constitutional rights." She also noted that she had "examined the record and the proceedings at trial," read defendant's post-conviction petition, and "determined that no amendments to his pro se petition are necessary and adequate presentation of contention [*sic*], petitioner's pro se allegations sufficiently state a claim, and no supplemental amended petition will be filed." The court granted counsel's motion to withdraw, and, subsequently, granted the State's motion to dismiss defendant's post-conviction petition.

¶ 7 In this appeal, defendant does not challenge the dismissal of his post-conviction petition on the merits. Rather, he contends that post-conviction counsel failed to fulfill her obligations under Rule 651(c) and *Greer* where "her claim that she consulted with [him] was insufficient, her account of the relevant evidence was incomplete and misstated important facts, and she addressed only a few of the many issues raised by [him]." The State responds that the record adequately establishes counsel's compliance with Rule 651(c). Our review is *de novo*. *People v. Suarez*, 224 Ill. 2d 37, 41-42 (2007).

¶ 8 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). That said, Rule 651(c) imposes specific duties on post-conviction counsel to ensure that she provides that level of assistance. *Suarez*, 224 Ill. 2d at 42. Under that rule, post-

¹ Although the transcripts refer to defendant's "power of attorney," an apparent typographical error, we find that counsel was ostensibly referring to trial counsel in light of the fact that she argued "[t]here was a very lengthy motion to quash and suppress," then recited the pertinent facts before concluding: "I did not see that I could file a petition to argue that Counsel was ineffective for failing to raise this issue."

conviction counsel is required to consult with defendant to ascertain his 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 his contentions. Ill. S. Ct. R. 651(c). However, post-conviction counsel is not required to advance frivolous claims on defendant's behalf, and may withdraw from representation on a post-conviction petition provided that counsel makes some effort to explain why defendant's claims are frivolous and patently without merit. *Greer*, 212 Ill. 2d at 205, 211-12.

¶ 9 Here, the record shows that defendant filed a post-conviction petition in which he claimed, essentially, that the trial court erred in finding that there was probable cause for his arrest, that trial counsel failed to effectively represent him at the hearing on his motion to suppress, and that appellate counsel was ineffective for failing to raise these issues. Counsel, in turn, filed a motion to withdraw from representing defendant on that petition in which she addressed the frivolousness of defendant's claims that he was arrested without probable cause and that he received ineffective assistance of appellate counsel with respect to it. She also argued the motion before the court, noted the lengthy motion to quash and suppress that was filed, and addressed what she perceived to be defendant's claim of ineffective assistance of trial counsel regarding that matter. The record thus shows that counsel made some effort to explain why defendant's claims were frivolous and patently without merit, and fulfilled her duties as prescribed by Rule 651(c). *Greer*, 212 Ill. 2d at 212.

¶ 10 In addition, the record shows that counsel advised the court that she had "consulted with [defendant], by mail, on numerous occasions to ascertain his contentions of deprivation of his Constitutional rights" and also "examined the record and the proceedings at trial." This latter assertion is expressly borne out by the record which shows that counsel recounted the facts of the case in her written motion and during argument on that motion. We thus find that the record

establishes that counsel substantially complied with the remainder of her duties under Rule 651(c). *People v. Garcia*, 405 Ill. App. 3d 608, 623-24 (2010).

¶ 11 Defendant disagrees with that conclusion, and claims that the record does not establish counsel's compliance with Rule 651(c). He specifically maintains that the consultation requirement was not met where counsel's averment that she consulted with him by mail lacked detail, and that the examination requirement was not met where counsel made misstatements in her motion and only partially recalled the testimony from the suppression hearing. With respect to the consultation requirement, however, Rule 651(c) does not require that counsel read into the record the details of each of her communications with defendant. We also find *People v. Komes*, 2011 IL App (2d) 100014, ¶ 35, cited by defendant in support of this position, clearly distinguishable from the case at bar. In *Komes*, 2011 IL App (2d) 100014, ¶ 35, unlike here, counsel did not specifically represent that she had consulted with petitioner, whose communication skills were impaired, to ascertain his contentions of deprivation of constitutional rights. Here, counsel's averment did not suffer this infirmity and was sufficient to establish compliance with the consultation requirement of Rule 651(c).

¶ 12 Furthermore, we find that defendant's claim that counsel did not examine the record has no factual basis. The record shows that counsel recounted the testimony from the hearing on defendant's motion to quash in her motion to withdraw and, thus, necessarily examined the record of that hearing to do so. *People v. Davis*, 156 Ill. 2d 149, 164-65 (1993) ("appointed counsel is required to examine as much of the transcript of proceedings as is necessary to adequately present and support those constitutional claims raised by [defendant]"). She also advised the trial court on the record that she had "examined the record and the proceedings at trial." The transcript of that proceeding thus belies defendant's claim that she did not, and we thus find defendant's contrary claim to be without merit.

¶ 13 Defendant also claims that counsel's motion to withdraw was deficient because it only addressed 3 of the 13 claims that he raised. However, we note that of the 13 claims identified in defendant's brief, many are from the amended post-conviction petition which was stricken by the trial court, and counsel had no obligation to address those issues. *People v. Pendleton*, 223 Ill. 2d 458, 476 (2006). As for the other claims, which were allegedly raised in defendant's original post-conviction petition, they were either addressed by counsel (ineffective assistance of appellate counsel), or were so unclear and inarticulately stated in defendant's petition that we find they could not have been fairly distinguished from general disagreement with the proceedings on the motion to quash arrest. We thus find that counsel's *Greer* motion was not deficient, that she fulfilled her obligations under Rule 651(c), and, accordingly, that the trial court properly allowed counsel to withdraw. *Greer*, 212 Ill. 2d at 211-12.

¶ 14 For the reasons stated, we affirm the second-stage dismissal of defendant's *pro se* post-conviction petition by the circuit court of Cook County.

¶ 15 Affirmed.