



failing to discover and call witnesses to show that others had committed the murder, and for failing to prepare for trial and review discovery. The petitions further alleged that defendants were denied due process because the court refused to permit them to introduce exculpatory evidence pertaining to others having committed the crimes and because the prosecution used perjured testimony to convict them. Defendants subsequently filed a number of supplemental or amended *pro se* postconviction petitions. Each was appointed counsel to represent them during the postconviction proceedings, yet defendants continued to file additional *pro se* petitions and eventually filed motions for fingerprint testing.

¶ 4 The court held an evidentiary hearing on the various petitions and motions, and on October 19, 2009, issued identical orders denying relief. The orders specifically noted that some of the issues raised in the petitions were simply reworded versions of issues raised on direct appeal. The court further commented that counsel had adequately explained why they handled the issues involving the hair and fingerprints as they had. The court concluded that defendants failed to establish that trial counsel's performances were either substandard or prejudicial.

¶ 5 Defendants argue on appeal that their causes should be remanded for further postconviction proceedings because neither counsel complied with Illinois Supreme Court Rule 651(c) (eff. Dec. 1, 1984). The Post-Conviction Hearing Act (the Act) (725 ILCS 5/122-1 to 122-8 (West 2008)) requires that counsel appointed to represent a *pro se* petitioner provide a reasonable level of assistance to the petitioner. *People v. Owens*, 139 Ill. 2d 351, 364, 564 N.E.2d 1184, 1189 (1990). Rule 651(c) imposes specific obligations on counsel to ensure a *pro se* petitioner receives the reasonable level of assistance required by the Act. *People v. Turner*, 187 Ill. 2d 406, 410, 719 N.E.2d 725, 728 (1999). Specifically, the rule requires that the record show that counsel has consulted with the defendant either by mail or in person to ascertain his or her claims of deprivation of constitutional rights, examined the

record of the trial court proceedings, and made any amendments to the *pro se* petitions necessary for an adequate presentation of the defendant's contentions. *People v. Lander*, 215 Ill. 2d 577, 584, 831 N.E.2d 596, 600 (2005). The failure to file a certificate showing compliance with the rule, however, is not reversible error if the record demonstrates that counsel adequately fulfilled the required duties. *Lander*, 215 Ill. 2d at 584, 831 N.E.2d at 600. Defendants assert that neither counsel filed a certificate stating that they complied with Rule 651(c). The supplemental record on appeal, however, contains the certificates, along with counsel's affidavits, thereby proving counsel's compliance with the Rule. See *People v. Harris*, 50 Ill. 2d 31, 33-34, 276 N.E.2d 327, 329 (1971) (record may be supplemented with trial counsel's Rule 651(c) certificate pending appeal); see also *People v. Waldrop*, 353 Ill. App. 3d 244, 247, 818 N.E.2d 888, 891 (2004) (record on appeal may be supplemented when there are material omissions or inaccuracies as long as the supplement does not impeach or contradict the record). As defendants note, neither attorney explicitly stated on the record that he had consulted with his client to ascertain his claims of deprivation of constitutional rights. But, the record also reflects that the attorneys met with their clients on at least four different occasions before the hearing on the State's motion to dismiss. The record further shows that their cases were delayed so that the attorneys could review the records. The certifications stating that counsel consulted with defendants and examined the records of the trial proceedings therefore are not contradicted by the record. Defendants point out, however, that neither counsel made any amendments to their pleadings. The reasonable level of assistance provided under the Act is fulfilled when counsel investigates and properly presents the petitioner's claims; it does not require counsel to advance frivolous or spurious claims on a defendant's behalf. *People v. Pendleton*, 223 Ill. 2d 458, 472, 861 N.E.2d 999, 1007 (2006); *People v. Davis*, 156 Ill. 2d 149, 164, 619 N.E.2d 750, 758 (1993). Summarily, no amendments were necessary in this instance. The supplemental certifications

and affidavits that counsel submitted therefore are sufficient to show compliance with the rule.

¶ 6 Turning back to the issue of counsel's failure to amend defendants' *pro se* petitions, inadequate representation is shown only where a defendant establishes the petition could have been amended to state a nonfrivolous claim. *People v. Wren*, 223 Ill. App. 3d 722, 731, 585 N.E.2d 1216, 1222 (1992). If the amendments would only further a frivolous or patently nonmeritorious claim, they are not necessary within the meaning of the rule. We further note that we are faced here with an appeal from the third-stage denial of defendants' postconviction petitions after an evidentiary hearing. When a postconviction judge presides over a third-stage evidentiary hearing involving fact-finding and credibility determinations, his findings will not be reversed unless manifestly erroneous. *Pendleton*, 223 Ill. 2d at 473, 861 N.E.2d at 1008. No such manifest error exists in this instance.

¶ 7 Defendants believe that the State's case against them was weak, depending entirely upon the testimony of a codefendant who received substantial benefits for testifying against them. Both allege that counsel presented inadequate offers of proof when attempting to convince the trial court that defendants should be allowed to present to the jury evidence that others had committed the murder. The trial court ruled that the evidence concerning a confidential source's statement was not sufficiently reliable to be admissible. While a defendant may prove any facts or circumstances tending to prove that another committed the crime with which he is charged, the trial court should, in its discretion, exclude such evidence when it is remote, speculative, or fails to link a third person closely with the commission of the crime. *People v. Bruce*, 185 Ill. App. 3d 356, 364-65, 541 N.E.2d 708, 713 (1989). Their postconviction petitions, however, alleged that counsel failed to present available information that could have corroborated the confidential source's information and thereby showed it to be reliable. Defendants assert that there is a reasonable probability that they would have been

acquitted had the jury learned of the information from the confidential source with corroborating information. At the postconviction hearing, the court agreed with the State that this claim was waived because the trial record was sufficient to permit appellate counsel to raise the issue on direct appeal. The court also denied the claim on the merits, concluding that arguments as to inadequate offers of proof were not borne out by the record or testimony. Defendants cannot show prejudice merely by speculating that the results would have been different if counsel had performed differently. *People v. Love*, 285 Ill. App. 3d 784, 791, 674 N.E.2d 824, 828 (1996). Even if counsel had included the corroborating statement in their offers of proof, evidence of the confidential source's statement and the corroborating information still would have been properly excluded as being too speculative. Bare speculation about unidentified persons is not admissible. *Bruce*, 185 Ill. App. 3d at 365-66, 541 N.E.2d at 714. Counsel therefore was not ineffective for failing to include them, and the court's ruling denying defendants' claims of ineffective assistance of counsel was not manifestly erroneous.

¶ 8 Defendant Lenn Reed also contends on appeal that his counsel was ineffective for promising certain testimony in his opening statement when he allegedly knew before making his opening statement that the claim was not possible. Counsel told the jury that he anticipated hearing testimony from an individual that a person named Goree had killed the victim. During the trial, another witness reported that Goree was incarcerated at the time of the murder. Defendant claims he was prejudiced by his counsel's opening statement because it allowed the State to remark in its closing argument that counsel had not produced the promised testimony. Postconviction counsel did not present an argument regarding the Goree claim, did not question counsel about his reason for mentioning Goree in his opening statement, and presented no other evidence concerning this claim. Because defendant presented no evidence at the evidentiary hearing in support of his claim, the trial court's

ruling denying his claim was not manifestly erroneous. Defendant failed to carry his burden of making a substantial showing of a constitutional violation. See *Pendleton*, 223 Ill. 2d at 471, 861 N.E.2d at 1007.

¶ 9 Defendant claims that postconviction counsel should have amended his *pro se* supplemental petitions by adding a claim that appellate counsel was ineffective for failing to raise this claim on direct appeal. Appellate counsel is not required to raise every conceivable issue on appeal and is not incompetent for refraining from raising issues that counsel believes are without merit. *People v. Edwards*, 195 Ill. 2d 142, 163-64, 745 N.E.2d 1212, 1224 (2001). Decisions concerning which witnesses to call at trial and what evidence to present on a defendant's behalf rest with trial counsel. *People v. Wilborn*, 2011 IL App (1st) 092802, ¶ 79. These types of decisions are considered matters of trial strategy, which generally are immune from claims of ineffective assistance of counsel. See *People v. Smith*, 195 Ill. 2d 179, 188, 745 N.E.2d 1194, 1200 (2000). Moreover, counsel's decision to abandon a trial strategy during trial may be reasonable under the circumstances. At the time of the opening statement, defense counsel had reason to hope that those implicating Goree would still testify at trial. After these witnesses failed to materialize, he tried again to present the substance of their statements through another witness, for if the statements implicating Goree were false, then the same statements implicating defendants ought to be disbelieved too. See *People v. Ligon*, 365 Ill. App. 3d 109, 119-20, 847 N.E.2d 763, 773-74 (2006) (no ineffective assistance of counsel when unexpected events warrant failure to deliver promised testimony). More importantly, defense strategy was to vigorously impeach Cunningham and stress his alleged motive to lie in order to curry favor with the State. The statement implicating Goree was irrelevant to this defense. Under the circumstances presented, we are unable to conclude that defense counsel's performance fell below the objective standards of reasonableness required. Accordingly, defendant's claim of ineffective assistance of both

trial and appellate counsel fail.

¶ 10 For the foregoing reasons, we affirm the judgment of the circuit court of Madison county denying defendants' petitions for postconviction relief.

¶ 11 Affirmed.