2015 IL App (2d) 131334-U
No. 2-13-1334
Order filed November 4, 2015

IN THE

APPELLATE COURT OF ILLINOIS

SECOND DISTRICT

THE PEOPLE OF THE STATE OF ILLINOIS,	)	Appeal from the Circuit Court of Lake County.
Plaintiff-Appellee,	)	
v.	)	No. 06-CF-4929
QUINTON GREATHOUSE,	)	Honorable George Bridges,
Defendant-Appellant.	)	Judge, Presiding.

JUSTICE BIRKETT delivered the judgment of the court.
Justices McLaren and Jorgensen concurred in the judgment.

ORDER

¶ 1 *Held*: Defendant received the statutorily mandated reasonable assistance from his postconviction counsel; counsel's failure to file a motion requesting additional forensic testing of a blanket did not fall short of his obligations under Illinois Supreme Court Rule 651(c) (eff. Apr. 26, 2012).

¶ 2 Following a jury trial, defendant, Quinton Greathouse, was convicted of one count of predatory criminal sexual assault (720 ILCS 5/2-14.1(a)(1) (West 2006)) and was sentenced to a 20-year term of imprisonment. Defendant's conviction was affirmed on direct appeal. *People v. Greathouse*, No. 2-08-0614 (2010) (unpublished order under Supreme Court Rule 23). Defendant filed a *pro se* postconviction petition alleging ineffective assistance of trial counsel.

The petition was advanced to the second stage, and an amended postconviction petition was filed by postconviction counsel. The petition survived the State's motion to dismiss, and the petition was advanced to the third stage. Following the hearing on the merits, the circuit court of Lake County denied the amended postconviction petition. On appeal, defendant argues that postconviction counsel did not provide reasonable assistance because counsel did not request independent testing of deoxyribonucleic acid (DNA) evidence found on a blanket, and the testing was necessary to adequately present the claim that his trial attorney was ineffective. The State also raises concerns about defendant's mittimus. We affirm.

¶ 3 I. BACKGROUND

¶ 4 Defendant was initially charged with five counts of predatory criminal sexual assault of a child alleging that, during the period between October 1, 2006, and November 17, 2006, he had committed five acts of sexual penetration against the victim, his stepdaughter, I.P. Defendant was acquitted on four of the counts, and was convicted of the predatory criminal sexual assault count corresponding to the date of November 17, 2006.

¶ 5 At the trial, I.P. testified that she and her brother and sister had spent the night at defendant's home. Defendant dropped off her sister at daycare, dropped off her brother at his bus stop for school, and returned I.P. to her mother's home, all of which was according to their normal routine. On November 17, 2006, however, defendant did not leave, but accompanied I.P. into her mother's home. After a shower, defendant took I.P into her mother's bedroom where he placed his finger in her vagina. I.P. testified that defendant also made her place her mouth on his penis until white stuff came out of it. I.P. testified that some of the white stuff got on her hand, so she wiped her hand on a nearby blanket in her mother's room as well as spat it from her mouth onto the blanket.

¶ 6 Later in the trial, Kelly Lawrence, a forensic scientist with the Northeastern Illinois Regional Crime Laboratory, testified about the various examinations and testing she performed on the blanket. On the blanket were over 50 stains. Lawrence identified nine stains that were presumptively from semen. Of the nine, two stains, labeled A and C, also contained saliva, as determined by the presence in the stain of a protein, amylase, that is present in saliva. Lawrence was able to separate stain A and stain C into a fraction containing only the genetic material from the semen (the semen fraction) and a fraction containing all the other genetic material present (the saliva fraction). Lawrence did not perform further testing on any of the other stains. The semen fraction of stain A contained genetic material from defendant and the saliva fraction contained genetic material from an unknown female. The semen fraction of stain C contained genetic material from defendant, and the saliva fraction contained genetic material from defendant, genetic material from the same unknown female as stain A, and genetic material from I.P.

¶ 7 Trial counsel vigorously cross-examined Lawrence about the possibility that there had been contamination of stain C, which resulted in the commingling of the three genetic profiles. Trial counsel also questioned whether stain C could have been caused by deposition of genetic material from the unknown female and defendant onto an already existing stain caused by I.P. or by I.P. salivating or spitting onto an already existing stain caused by defendant and the unknown female. Lawrence testified that folding a wet stain onto another wet stain could cause contamination. Lawrence did not recall how the blanket had been folded and did not know whether stain C was folded so that it contacted stain A. However, Lawrence testified that, if the stains had been dry at the time the blanket was collected, it was very unlikely that contamination would occur by folding one of the stains on top of another. Lawrence testified that, moreover, if there were contamination from a dried stain, she would not expect to see a full genetic profile because the genetic material in the base stain would be so much greater than the contaminating genetic material. Lawrence testified that she was able to make full genetic profiles from each of the contributors to stain C, so she did not believe that folding the blanket had caused any contamination of stain C. Finally, we note that the blanket was collected about three weeks after the incident at issue, and Lawrence testified that any wet stains should have dried in that time period. Defendant was convicted by the jury of the predatory criminal sexual assault of I.P. corresponding to the November 17, 2006, before-school incident.

¶ 8 On direct appeal, defendant argued that the State had not provided a sufficient chain of custody for the blanket, so it could not legitimately claim that there was not a reasonable probability that the blanket had not been altered or contaminated. Defendant also argued that he was improperly restricted in his cross-examination and examination of witnesses on the issue of I.P.'s bias and motive to fabricate. We affirmed the judgment of the trial court. *Greathouse*, No. 2-08-0614 (2010) (unpublished order under Supreme Court Rule 23).

¶ 9 On April 11, 2011, defendant filed a *pro se* postconviction petition alleging that his trial counsel had been ineffective because he failed to investigate and present a possible alibi defense and he failed to investigate and present evidence discrediting the physical evidence presented by the State, particularly, the blanket. Defendant alleged that trial counsel had refused his request to subject the State's DNA evidence to further testing and, if counsel had done so, the further testing would have turned up exculpatory evidence. The trial court determined that defendant's allegations in his *pro se* petition stated the gist of a claim and advanced the petition to the second stage and appointed postconviction counsel.

¶ 10 Postconviction counsel filed the requisite certificate pursuant to Illinois Supreme Court

Rule 651(c) (eff. Apr. 26, 2012), and an addendum to defendant's petition. In the addendum, postconviction counsel alleged that trial counsel was ineffective because he did not have the blanket tested by an independent forensic expert. Postconviction counsel reasoned that, because defendant was acquitted of the counts that were not supported by forensic testing and genetic evidence, had the State's forensic and genetic evidence been successfully challenged through independent forensic testing and evidence, defendant would have been acquitted on all counts. Postconviction counsel did not, however, file a motion requesting the additional independent forensic testing he believed trial counsel should have requested.[1]

¶ 11 The State moved to dismiss the amended postconviction petition. The trial court denied the motion to dismiss and the amended petition moved into the third stage.

¶ 12 On October 9, 2013, the trial court held an evidentiary hearing on the amended postconviction petition. Documentary evidence was admitted. Particularly, trial counsel wrote that he decided not to hire an independent forensic expert to perform any additional testing on the blanket. Postconviction counsel argued that, if further testing of the blanket had revealed that

[1] Defendant alleges that postconviction counsel's representation was unreasonable precisely because counsel did not file a concurrent motion requesting forensic testing. We consider this claim below. We note that, as the trial court recognized, defendant's claim assumes, without proving or even attempting to establish, that additional testing would provide exculpatory evidence. However, there is a substantial likelihood that the additional testing would provide evidence corroborating I.P.'s testimony and firmly inculpating defendant. Thus, there is a rational basis below *not* to seek additional testing thereby leaving room to argue in favor of defendant.

the unknown female was I.P.'s mother, and that the untested stains showed genetic material from defendant and I.P.'s mother all over the blanket, defendant's view that I.P had fortuitously contaminated stain C when she was in her mother's bedroom playing on the blanket would have been bolstered, and the State's view that defendant sexually penetrated I.P. would have been undermined. Postconviction counsel reasoned that, had there been that evidence to challenge the State's genetic evidence, I.P's testimony would have been discredited, defendant's argument that I.P. was biased and had a motive to fabricate the charges would have been strengthened, and there would have been a reasonable probability that the jury would have acquitted defendant of the charge relating to the November 17, 2006, before-school incident.

¶ 13 The trial court disagreed and denied the amended postconviction petition. The trial court determined that the evidence did not support defendant's alibi theory and that trial counsel had provided reasonable representation regarding the alibi issue. Regarding the independent-forensic-testing issue, the trial court reasoned, pertinently:

> "4. Defendant's next allegation was that his trial counsel was ineffective for not getting a second opinion regarding the DNA evidence. The defendant does not allege any defect in the State's DNA analysis. Rather he alleged that, just in case there was a defect in the State's DNA analysis, his counsel should have hired a DNA expert and that his failure to do so was professionally unreasonable. This court is not aware of any rule of law or professional standards that would require defense counsel to hire an expert to double-check every scientific analysis the State performs in a case, to rule out the mere theoretical possibility of a defect in the analysis. Furthermore, defendant has cited no authority to that effect.
>
> 5. Here the DNA evidence was only supplemental to the primary evidence, which

consisted of the child victim's testimony and that of her mother, as well as the Defendant's testimony corroborating the victim's testimony regarding the routine he used in taking the children to school, and the fact that his semen might possibly be found on the blanket. In addition, there was an obvious benefit in not having the blanket tested. Had the blanket been tested and had it showed that [the] only saliva of the victim was found in the stain containing the defendant's semen it clearly would have bolstered the State's case. This court finds it to be sound strategy for trial counsel to have hedged his bet by forgoing any testing of the blanket to allow the argument that the untested stains all belonged to the victim to support his contamination theory.

6. When the potential minimal benefit of having the blanket tested was balanced against the clear benefit of not having the blanket tested, the balance justified the decision not to have them tested. That decision was a classic exercise of sound trial strategy. Because defendant did not substantially show any deficient performance as to trial counsel's decision not to seek testing of the blanket, the defendant has failed to establish that trial counsel was deficient.

7. Even if the DNA testing had been done, and assuming that the victims [*sic*] saliva would have been found on numerous locations on the blanket, such evidence would have had no impact on the trial in light of the evidence against defendant. The jury likely would have concluded, as they did, that the combination of defendant's semen and the victim's saliva in the one stain was the result of unlawful sexual assault. Decisions regarding which witnesses to call and what evidence to present at trial on defendant's behalf are considered matters of trial strategy, and as such, are generally immune from claims of ineffective assistance of counsel. *People v. Munson*, 206 Ill. 2d

104 (2002). Therefore, this court finds that defendant has not established that because of his trial counsel's performance that he was prejudice [*sic*] and denied effective assistance of counsel.

8. Again, this court finds that defendant cannot show that counsel's conduct was unreasonable, or that he was prejudiced by counsel's actions or lack thereof. The record shows that trial counsel's primary theory of defense in this case was that the blanket had not been properly processed resulting in a mixing of the victim's saliva and defendant's semen, and therefore, the evidence would fail to prove defendant guilty beyond a reasonable doubt. Trial Counsel's decision to emphasize the improper handling of the blanket was an attempt to portray the police investigation as being insufficient and was a matter of trial strategy. By arguing that the stain had been contaminated counsel attempted to create reasonable doubt that would allow the jury to find defendant not guilty. Defendant's assertion that had trial Counsel had the blanket tested by a defense expert that it would have been exculpatory evidence is purely speculative. During the hearing on defendant's post-conviction petition no evidence was introduced to support the need for additional testing of the blanket.

9. Moreover, Counsel's theory of defense could very well have been destroyed and his argument that reasonable doubt existed would have been even less persuasive. Instead, by focusing on the lack of forensic testing of all of the stains on the blanket, counsel was able to argue that the police mishandled the evidence and thereby contaminated the blanket and co-mingled [*sic*] the victim's saliva with defendant's semen."

¶ 14 The trial court denied the amended postconviction petition. Defendant timely appeals.

¶ 15 II. ANALYSIS

¶ 16 On appeal, defendant focuses on the trial court's conclusion that postconviction counsel did not provide any evidence "to support the need for additional testing of the blanket." Specifically, defendant argues that postconviction counsel did not provide reasonable assistance where he failed to request independent testing of the blanket and the DNA evidence where the testing was necessary to adequately present defendant's argument that trial counsel was ineffective for failing to seek the independent testing of the blanket. The State also argues that the mittimus must be corrected because the trial court's oral pronouncement differed from its written judgment. We address each issue in turn.

¶ 17 A. Postconviction Counsel's Assistance

¶ 18 A postconviction petitioner's right to counsel is statutory, not constitutional (*People v. Suarez*, 224 Ill. 2d 37, 42 (2007)), and the petitioner is entitled only to the reasonable assistance of counsel in postconviction proceedings. *People v. Patterson*, 2012 IL App (4th) 090656, ¶ 23. Illinois Supreme Court Rule 651(c) (eff. Feb. 6, 2013) ensures reasonable assistance by imposing the requirements that postconviction counsel consult with the defendant to ascertain his contentions regarding the deprivation of constitutional rights, examine the record of the proceedings at trial, and make any amendments to the defendant's *pro se* petition that are necessary for an adequate presentation of his contentions. Ill S. Ct. R. 651(c) (eff. Feb. 6, 2013); *Suarez*, 224 Ill. 2d at 42.

¶ 19 Our standard of review of the trial court's ruling on a postconviction petition depends on the stage at which the ruling is made. For a petition, like here, that has advanced to the third stage, where the trial court makes factual findings and credibility determinations, we will not disturb the trial court's judgment unless it is manifestly erroneous. *People v. Pendleton*, 223 Ill.

2d 458, 473 (2006). If no factual findings and credibility determinations are involved, such as where no new evidence is presented and the issues presented are purely questions of law, we review the trial court's judgment *de novo*. *Id.* However, we return to the manifestly erroneous standard where the trial court presiding over the postconviction proceedings has some special or familiarity with the defendant's trial or sentencing, and the trial court's familiarity has some bearing on the resolution of the postconviction petition. *Id.* In this case, the trial court presiding over defendant's amended postconviction petition presided over his trial and sentencing, but no new evidence was presented, and the trial court's familiarity did not have any bearing on the petition's resolution, so our review is *de novo*.

¶ 20 Defendant raises a narrow claim on appeal, going not to the merits of his postconviction petition, but to the process afforded him in reviewing that petition in the trial court. Specifically, defendant contends that postconviction counsel did not perform his duties under Supreme Court Rule 651(c) and thereby provided unreasonable assistance where he made a claim that additional testing was needed on the blanket to demonstrate sufficient support for defendant's theory of the case so that a different outcome at trial would have been reasonably likely, but failed to include a motion to perform that additional testing. The State recognizes defendant's narrow argument, noting that "[d]efendant does not argue that the trial court's ruling denying the post-conviction petition was manifestly erroneous," because, "[i]nstead, defendant argues that he received the unreasonable assistance of post-conviction counsel because [postconviction counsel] failed to ask for discovery of additional DNA testing of the blanket at issue in these proceedings." The State then, however, proceeds to argue the merits of defendant's amended postconviction petition, and fails to substantially address the argument that postconviction counsel did not comply with Supreme Court Rule 651(c).

¶ 21 At issue here is whether postconviction counsel complied with his duties under Rule 651(c) by making the appropriate amendments to defendant's *pro se* petition necessary for adequate presentation of defendant's contentions. Ill. S. Ct. R. 651(c) (eff. Feb. 6, 2013). Two cases clearly control our analysis and the outcome of this portion of the case.

¶ 22 In *People v. Moore*, 189 Ill. 2d 521, 541 (2000), our supreme court considered the precise question of postconviction counsel's "duty under Rule 651(c) to submit affidavits and other evidence to support allegations raised in the postconviction petition." The court, relying on *People v. Williams*, 186 Ill. 2d 55 (1999), held that, because defendant did not provide additional information to postconviction counsel about witnesses who would have challenged the State's witnesses regarding fingerprint and hair evidence, and because postconviction counsel had consulted with the defendant, had reviewed the record, and had amended the *pro se* petition, postconviction counsel had provided reasonable assistance. *Id.* at 543.

¶ 23 Likewise, in *Williams*, our supreme court held that postconviction counsel was not obligated to locate witnesses that the defendant did not specifically identify or to conduct further investigations to identify witnesses who would provide evidence to support claims made in the postconviction petition. *Williams*, 186 Ill. 2d at 60-61. In *Williams*, the defendant shot two people, killing one, injuring the other. *Id.* at 58. The defendant was arrested and the weapon used in the shooting was recovered from the defendant's jacket. The defendant admitted he shot the two people in an oral statement. *Id.* The defendant filed a *pro se* postconviction petition alleging, among other things, that his trial counsel was ineffective for failing to engage a blood-type expert witness to type the blood on the clothing of the deceased victim, and his trial and appellate counsels were ineffective for failing to challenge the chain of custody of the bullet removed from the injured victim's body. *Id.* at 59.

¶ 24 Our supreme court specifically held that the defendant's postconviction counsel "clearly had no obligation to seek out a blood-type expert or to conduct a fishing expedition for evidence regarding the chain of custody of the bullet." *Id.* at 61. The court based this holding on *People v. Johnson*, 154 Ill. 2d 227, 247-48 (1993), which held that, while postconviction counsel has an obligation to present a postconviction petitioner's claims in the appropriate legal form, counsel did not have an obligation to engage in a search for evidence to support those claims. Applying the principles from *Johnson*, the *Williams* court reasoned that it was the defendant, not his postconviction counsel, who was responsible for providing the information regarding the witnesses to support his evidentiary claims, and the defendant had not provided any information about the blood type or chain of custody to postconviction counsel. *Williams*, 186 Ill. 2d at 61. Accordingly, the court held that "the failure of [the] defendant's appointed post-conviction counsel to support the *** claims in the amended post-conviction petition with affidavits or other evidence did not fall below the reasonable level of assistance required by Rule 651(c)." *Id.* at 62.

¶ 25 Likewise, *Johnson* is in harmony with *Moore* and *Williams*. In *Johnson*, the defendant's postconviction petition was denied at the second stage. The defendant argued that postconviction counsel failed to attach the necessary affidavits and evidence to the amended postconviction petition to survive the second-stage review. *Id.* at 238-39. The defendant's *pro se* postconviction petition specifically identified the witnesses, including expert witnesses, whom the defendant believed should have been called by his trial counsel. *Id.* at 242-44. Postconviction counsel admitted that he had not attempted to interview the identified witnesses. *Id.* at 243-44. Our supreme court held that postconviction counsel's failure constituted unreasonable assistance of counsel during the postconviction proceedings. *Id.* at 243-45.

¶ 26 Thus, in *Johnson*, the failure to include evidence in the amended postconviction petition occurred even though the defendant had specifically identified the witnesses and the general substance of those witnesses' testimony, which resulted in the court's determination that postconviction counsel had failed to provide reasonable assistance. *Id.* In *Moore* and *Williams*, postconviction counsel did not include evidence in the amended postconviction petitions, but the defendants did not identify the witnesses or the general substance of their testimony to postconviction counsels. Because the duty to provide reasonable assistance in postconviction proceedings did not require the postconviction counsels to independently discover the evidence absent the defendant's identification of the witnesses, they did not provide unreasonable assistance in those circumstances. *Moore*, 189 Ill. 2d at 543; *Williams*, 186 Ill. 2d at 62.

¶ 27 Here, defendant argues postconviction counsel was unreasonable because he did not find an independent forensic expert to conduct further testing on the blanket, asserting that this additional testing would have unearthed exculpatory evidence. We disagree. Defendant did not identify an expert who would have provided exculpatory evidence, only that additional testing would (might) have produced exculpatory evidence. This is plainly insufficient under *Moore*, *Williams*, and even *Johnson*. Accordingly, we cannot say that postconviction counsel in this case provided unreasonable representation.

¶ 28 Defendant supports this contention with citation to three cases, all of which are distinguishable. In *People v. Turner*, 187 Ill. 2d 406, 413 (1999), postconviction counsel failed to make the necessary amendments to the defendant's petition to actually state a legally cognizable claim. Specifically, postconviction counsel did not add an allegation of prejudice to the defendant's claim of ineffective assistance of trial counsel. *Id.* Likewise, postconviction counsel did not add an allegation that evidence withheld by the State was material to the defendant's claim of a violation of *Brady v. Maryland*, 373 U.S. 83 (1963). *Id.* Postconviction counsel also failed to attach affidavits to support the defendant's claims in the postconviction petition, and the court held that this omission was fatal to the defendant's claims. *Id.* at 414. However, the court also noted that postconviction counsel labored under a misapprehension of the law, believing that he did not have to include evidence and affidavits in the second-stage amended postconviction petition. *Id.* Based on all of these circumstances, the court held that postconviction counsel's representation was not only unreasonable, but it amounted to virtually no representation at all. *Id.* at 416.

¶ 29 In *Turner*, then, counsel's performance was so deficient, it amounted to essentially no representation at all. *Id.* Here, by contrast, postconviction counsel not only amended defendant's *pro se* postconviction petition, he also guided it successfully through the second-stage proceeding to the third-stage evidentiary hearing. Thus, postconviction counsel's amendments were sufficient to survive the State's motion to dismiss. Accordingly, *Turner* is significantly factually distinguishable.

¶ 30 Defendant next contends that *People v. Waldrop*, 353 Ill. App. 3d 244 (2004), is a simple "failure-to-attach-an-affidavit" case. We again disagree. In *Waldrop*, the defendant's postconviction counsel in fact did not attach affidavits and other supporting evidentiary material to the amended postconviction petition, but he did so because he believed that affidavits were essential to a postconviction petition only if the petition alleged that the trial counsel failed to present an alibi witness. *Id.* at 249. This court held that such a misapprehension of the law undermined the defendant's claim before the trial court and constituted unreasonable assistance. In addition, the defendant alleged that his trial counsel was ineffective for failing to contact a specifically identified eyewitness. This court held that postconviction counsel's failure to attach an affidavit explaining the significance of the eyewitness's proposed testimony, again based on counsel's misapprehension of the law, was another instance of unreasonable assistance of postconviction counsel. *Id.* at 250. We note, too, that *Waldrop* is in harmony with *Moore*, *Williams*, and *Johnson*, because the eyewitness was specifically identified by defendant, who also explained what he believed the substance of the eyewitness's testimony would be.

¶ 31 While there is a component of failing to attach evidence to an amended postconviction petition in the *Waldrop* court's decision, the court focused on the postconviction counsel's misunderstanding of the law in determining that he had not provided reasonable assistance. In addition, the holding is in harmony with *Moore* and *Williams*, because the defendant specifically identified the witness and the substance of the witness's testimony to the postconviction counsel, as required by *Moore* and *Williams*, thereby triggering counsel's duty to act on that information and seek an affidavit from the eyewitness. Accordingly, we do not believe that *Waldrop* can be understood as a simple lack-of-affidavit case, but instead is consistent with our rationale above derived from *Moore* and *Williams*.

¶ 32 Defendant last argues that *People v. Kluppelberg*, 327 Ill. App. 3d 939, 943 (2002), turned on postconviction counsel's failure to attach a police report supporting the defendant's claim. While it is true that counsel did not attach the police report to the amended postconviction petition, the police report in question was in the common law record and was raised in a hearing on a motion *in limine*. The court concluded that postconviction counsel was unaware that the police report was in the record and concluded that counsel had not sufficiently reviewed the record for purposes of Rule 651(c). *Id.* at 946. Additionally, counsel did not allege the ineffectiveness of the defendant's appellate counsel, thereby forfeiting the issue of trial counsel's ineffectiveness, and the court held this to be unreasonable assistance. *Id.* at 947.

¶ 33 *Kluppelberg* is distinguishable. While counsel did not attach the police report, that failure was due counsel's insufficient review of the record. Here, by contrast, defendant does not suggest that postconviction counsel did not include an existing report containing exculpatory evidence; rather, defendant argues that counsel had to create the exculpatory evidence by searching for a forensic expert and engaging the expert to conduct further tests on the blanket. Thus, the circumstances between this case and *Kluppelberg* are factually distinct. Additionally, in *Kluppelberg*, postconviction counsel created a procedural bar by failing to allege the ineffectiveness of appellate counsel. Here, defendant points to no incorrectly or inadequately pleaded claim raised by postconviction counsel. *Kluppelberg* is distinguishable on this ground as well.

¶ 34 *Moore* and *Williams* control the result in this case. Defendant was required to specifically identify to postconviction counsel the witnesses who would support his postconviction claims. Defendant's cases, *Turner*, *Waldrop*, and *Kluppelberg*, are in harmony with this principle and are otherwise distinguishable from the circumstances here. Accordingly, we hold, because defendant did not specifically identify any witnesses who would support his postconviction claims, postconviction counsel was not obligated, under Rule 651(c), to search them out and discover further evidence to support defendant's claims. As a result, we cannot say that postconviction counsel provided unreasonable assistance to defendant.

¶ 35 Defendant changes tack somewhat and argues that, because postconviction counsel's adoption of his claim and argument that additional testing on the blanket was required, coupled with counsel's failure to file a motion requesting that additional testing, postconviction counsel's representation fell short of the Rule 651(c) requirement to provide reasonable assistance. Defendant argues that the failure to request the testing effectively consigned the claim to failure, because there was no evidence to back up the claim that additional testing would prove exculpatory. In support, defendant cites to *Patterson*, 2012 IL App (4th) 090656.

¶ 36 There are several reasons why the argument and the analogy to *Patterson* fail. First, and unlike *Patterson*, in which the defendant sought additional DNA testing under section 116-3 of the Code of Criminal Procedure of 1963 (725 ILCS 5/116-3 (West 2006)) (*Patterson*, 2012 IL App (4th) 090656, ¶ 4), here, defendant has no statutory basis under which to request the testing. This means he cannot evade the requirements of *Moore* and *Williams*.

¶ 37 Second, defendant misapplies the holding in *Patterson*. In *Patterson*, the defendant filed a *pro se* postconviction petition and filed a separate *pro se* motion for DNA testing which would provide evidence of actual innocence. *Id.* Counsel was appointed for the defendant on his postconviction petition, and counsel amended the petition to include the section 116-3 claim, yet did not file an amended section 116-3 motion on the defendant's behalf. *Id.* ¶ 5. The appellate court noted that section 116-3 did not limit the number of motions a defendant may bring. *Id.* ¶24. Further, the defendant's counsel amended the defendant's *pro se* postconviction petition to include a request for testing under section 116-3, but failed to present any evidence or argument in support of the request, effectively creating a procedural bar of *res judicata* to the defendant's section 116-3 motion, or any successive 116-3 motion. *Id.* ¶¶ 24-25. The court held that the creation of the procedural bar by the postconviction counsel constituted unreasonable assistance. *Id.* ¶ 25.

¶ 38 Here, by contrast, defendant does not argue that postconviction counsel's conduct created a procedural bar to requests for additional forensic testing of the blanket; rather, defendant argues that trial counsel was ineffective for accepting the forensic expert's tests on the blanket at face value. *Patterson* does not support a contention that counsel's representation was unreasonable because the forensic testing was accepted without question; rather, *Patterson* condemns the attorney's active mistake of creating a procedural bar to consideration of a substantive issue. *Id.* Additionally, the record rebuts that trial counsel passively accepted the forensic expert's testing. Rather, trial counsel attacked the handling of the blanket and vigorously examined Lawrence regarding the procedures she undertook in testing the blanket. Thus, we conclude that *Patterson* does not support the argument defendant makes about it.

¶ 39 Finally, the statutory basis underpinning *Patterson* serves to distinguish it. There, the defendant's request was based on section 116-3, which does not limit the number of motions a defendant may bring. *Id.* Here, by contrast, defendant's request is freestanding and not based on statutory authority. Therefore, successive motions are not contemplated, and the fact that *Patterson*'s postconviction counsel effectively created the procedural bar of *res judicata* is inapplicable to the situation here, where no successive motions are contemplated. Thus, counsel's failure to move for additional testing of the blanket does not have the effect of foreclosing an outstanding *pro se* request as well as successive requests as it did in *Patterson*. Accordingly, *Patterson* is wholly distinguishable.

¶ 40 Finally, defendant's substantive point mischaracterizes *Patterson*. Defendant interprets *Patterson* as holding that counsel's unreasonable level of representation was due to counsel's failure to file an accompanying motion with the request in the postconviction petition for additional testing. *Patterson* makes clear, however, that counsel's failing was the creation of the *res judicata* barrier to the existing *pro se* motion for testing pursuant to section 116-3 and to successive motions. *Id.* Accordingly, we reject this line of argument.

¶ 41 With that said, would it have been desirable for postconviction counsel in this case to have filed a concurrent motion for additional testing, even in the absence of express statutory authority to do so? Yes, it would have made the postconviction proceedings a little cleaner. Was it necessary to do so to meet the standard of reasonable representation that is attached to postconviction proceedings? No. The matter proceeded to a third-stage evidentiary hearing, and the issue was addressed; further, counsel's failure did not create a procedural bar as in *Patterson*. Thus, while including a motion for additional testing would have been more thorough, we do not believe that counsel's obligation to provide reasonable representation required that such a motion be filed.

¶ 42 Defendant also appears to touch on an issue of basic logic: if no additional testing of the blanket is requested, then how can defendant demonstrate that the additional testing would result in the discovery of exculpatory evidence? Because counsel did not file a motion for leave to conduct the additional testing, defendant's argument that the additional testing was necessary could not be supported during the third stage. We recognize the conundrum, but we do not agree that it is significant.

¶ 43 Here, the blanket had over 50 discrete stains on it. Nine of the stains were found to contain semen. Of the nine semen-containing stains, only two were mixed with saliva. Defendant's argument is that either the semen-containing stains were contaminated, or that the failure to test the more than 40 untested stains would have turned up exculpatory evidence. The former issue was extensively covered during trial and on appeal, and we need not revisit it.

¶ 44 Regarding the untested stains, defendant contends that they would provide exculpatory evidence if they were tested. We see the possible scenarios that are favorable to defendant to be: (1) many untested stains are attributed to I.P.'s saliva; (2) many untested stains are attributed to defendant; or (3) many untested stains are attributed to a combination of I.P. and defendant. In scenario (1), I.P.'s saliva caused many of the stains, and it makes it more likely that the stain consisting of defendant's semen and I.P.'s saliva was either laid down over a preexisting stain caused by I.P. or I.P.'s saliva landed on a preexisting stain made by defendant. While it may be more likely, the damning fact that I.P. alleged that defendant orally sexually assaulted her is strongly bolstered by the mixture of I.P.'s saliva and defendant's semen in the single stain. If defendant's contention that I.P.'s saliva should be found in many of the stains were viable, then we should expect to see more of the stains containing semen to also contain saliva, and specifically I.P.'s saliva. There are only two stains that contained a mixture of semen and saliva, and only a single stain containing semen and I.P.'s saliva. Thus, defendant's contention is not supported by the existing evidence and, in fact, is affirmatively rebutted.

¶ 45 In the second scenario, defendant contributed or caused many of the stains. Defendant admitted that he repeatedly had sexual relations with I.P.'s mother on or around the blanket. Thus, we would expect that defendant contributed or caused many of the stains. This scenario does not ameliorate the fact that, out of more than 50 stains and 9 stains containing semen, only one contains DNA from both defendant and I.P., and this corresponds to I.P.'s allegation that defendant orally sexually assaulted her. Likewise in this scenario, the existing evidence contradicts the purportedly exculpatory value of finding many stains attributed to defendant.

¶ 46 Finally, in the third scenario, many stains contain a combination of defendant's and I.P.'s DNA. This again does not seem to be helpful to defendant given the existing evidence. Even if the untested stains contain both defendant's and I.P.'s DNA, there is still only a single stain out of more than 50 that contains defendant's semen and I.P.'s saliva, which strongly supports I.P.'s allegation that defendant orally sexually assaulted her. Even if every other stain contained a combination of defendant's and I.P.'s DNA, the fact that only a single stain contains defendant's semen and I.P.'s saliva still strongly corroborates I.P.'s allegation. In this scenario, too, the evidence turning out as defendant suggests does nothing to actually exculpate defendant.

¶ 47 Summing up, we see nothing that the additional testing could accomplish that would exculpate defendant given that stain C contains defendant's semen and I.P.'s saliva. Accordingly, we reject defendant's argument.

¶ 48 We also note that the trial court engaged in similar reasoning in denying defendant's petition after the third-stage evidentiary hearing. The trial court reasoned that, even "assuming that the victims [*sic*] saliva would have been found on numerous locations on the blanket, such evidence would have had no impact on the trial in light of the evidence against defendant." The trial court also determined that defendant's assertion that additional testing of the blanket would have produce exculpatory evidence was purely speculative, and no evidence presented during the third-stage evidentiary hearing supported the need for additional testing of the blanket.

¶ 49 Finally, we note that defendant's amended postconviction petition requested that the trial court order additional testing on the blanket. In other words, the relief sought by defendant was to have the additional testing conducted on the blanket, and a new trial based on the ineffectiveness of trial counsel's failure to include the additional (and purportedly exculpatory) testing of the blanket. The trial court properly considered the request and denied it, finding that it would not have made a difference and holding that trial counsel was not ineffective. To the extent that defendant specifically challenges it, we agree with the trial court's determination.

¶ 50 Defendant argues that counsel's failure to fulfill his obligations under Rule 651(c) cannot be considered harmless error. Defendant correctly notes that a postconviction counsel's failure to meet the requirements of Rule 651(c) cannot be excused on the basis of harmless error. *Suarez*, 224 Ill. 2d at 51-52. However, as we have discussed above, postconviction counsel did not provide unreasonable representation on the postconviction petition, so the rule in *Suarez* does not apply here. Accordingly, we reject defendant's contention.

¶ 51 Defendant argues that the issue of what the additional DNA testing would have revealed is not relevant to this appeal. Defendant notes that any claim adopted by counsel is potentially meritorious, because counsel cannot advance a claim that is frivolous or patently without merit. *People v. Greer*, 212 Ill. 2d 192, 205 (2004) ("[a]n attorney *** who determines that [the] defendant's claims are meritless cannot in good faith file an amended [postconviction] petition of behalf of [the] defendant"). Defendant contends that, in order to adequately present the claim, postconviction counsel needed to file a motion for further testing on the blanket or explain why it was not done. We disagree. The postconviction petition sought the additional testing itself, seeking both testing and a new trial (presumably when the additional testing revealed exculpatory evidence). However, we can see no circumstance in which additional testing would have produced such evidence given I.P.'s allegations against defendant and the testing already undertaken on the blanket. Accordingly, additional testing would be unavailing, and counsel did not provide unreasonable representation even though he did not file a motion for additional testing on the blanket.

¶ 52 Accordingly, we hold that the postconviction counsel fulfilled his duties under Rule 651(c), and that counsel did not provide unreasonable representation to defendant on his postconviction petition.

¶ 53 B. Defendant's Mittimus

¶ 54 The State contends that defendant's sentence was incorrectly written on the sentencing order and urges that, pursuant to Supreme Court Rule 615 (eff. Jan. 1, 1967), we correct the sentencing order and mittimus. Defendant argues, by contrast, that we should not remand the matter to the trial court for entry of a corrected mittimus. Obviously, the parties are arguing past each other. With that said, we will consider the State's claims of error in the sentence.

¶ 55 First, the State contends that the trial court's written order imposing a mandatory supervised release (MSR) term of from three years to natural life violates the requirement of determinate sentences and requests that we correct the term as written to include only a determinate three-year MSR term. We disagree.

¶ 56 The trial court stated, when imposing sentence, "I'm going to sentence you, [defendant] to the Department of Corrections for 20 years, plus the three years mandatory supervised release." On the sentencing order, however, the MSR term was indicated as "3" years with handwritten language in the margin adding "to natural life." The State contends that the oral pronouncement and written judgment vary, so we must resolve the variance and correct the MSR term to a determinate term of three years. The State's argument is incorrect.

¶ 57 Effective July 11, 2005, MSR terms for certain offenses, including predatory criminal sexual assault, were changed to be indeterminate terms of from three years to natural life. 730 ILCS 5/5-8-1(d)(4) (West 2006); *People v. Rinehart*, 2012 IL 111719, ¶ 25. Our supreme court held that the MSR term for the few offenses listed in section 5-8-1 is indeterminate despite the requirement of determinate sentences. *Id.* ¶ 29-30. Further, the offense was committed after the effective date of the provision requiring the MSR term for predatory criminal sexual assault be a minimum of three years extending to natural life. Accordingly, the trial court's oral pronouncement of a determinate MSR term of three years was incorrect and the written term on the sentencing order was correct. Because of this, we hold that the written order controls and defendant's MSR term is proper as written: a minimum of three years extending to a maximum of defendant's natural life. We reject the State's contention.

¶ 58 The State also contends that there is a further discrepancy between the trial court's oral pronouncement and its written order. The trial court stated that, as further conditions of defendant's sentence, he would "be required to register as a sex offender and comply with all of the other statutory requirements involving DNA and sexually transmitted disease." The State asserts that, by contrast, the judgment order did not require defendant to "pay a DNA fee." The State argues, somewhat opaquely, that, looking at the record as a whole, the trial court intended to impose the "DNA fee" on defendant and requests that we expressly add to the judgment order "the requirement that defendant pay the DNA fee."

¶ 59 The State has forfeited this contention. It is true that the trial court stated that defendant was to "comply with all of the other statutory requirements involving DNA and sexually transmitted diseases." However, in its argument on this issue, the State neither identifies any provisions "involving DNA" nor acknowledges the two separate orders entered at the same time as the sentencing order requiring defendant to undergo blood draws and to have the costs taxed to him upon the submission of a bill for the services by the Lake County Health Department. It is unclear in the record whether these orders cover the "DNA fee" orally imposed by the trial court; further, the State does not argue or comment about the effect of these orders. Finally, the State does not identify any provisions that would support the imposition of a "DNA fee" upon defendant. Because, in any event, the State has not provided us with a citation to relevant authority, it has forfeited its contention on this issue. Ill. S. Ct. R. 347(h)(7) (eff. Feb. 6. 2013); *People v. Macias*, 2015 IL App (1st) 132039, ¶ 88 (failure to cite relevant authority results in the forfeiture of the argument). Accordingly, we hold that the State has forfeited its argument on the "DNA fee" issue.

¶ 60 III. CONCLUSION

¶ 61 For the foregoing reasons, we affirm the judgment of the circuit court of Lake County.

¶ 62 Affirmed.