

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).

2015 IL App (4th) 140209-U

NO. 4-14-0209

IN THE APPELLATE COURT

OF ILLINOIS

FOURTH DISTRICT

FILED

December 30, 2015
Carla Bender
4th District Appellate
Court, IL

THE PEOPLE OF THE STATE OF ILLINOIS,)	Appeal from
Plaintiff-Appellee,)	Circuit Court of
v.)	Champaign County
RONALD W. YOUNG,)	No. 03CF837
Defendant-Appellant.)	
)	Honorable
)	Thomas J. Difanis,
)	Judge Presiding.

JUSTICE TURNER delivered the judgment of the court.
Presiding Justice Knecht and Justice Holder White concurred in the judgment.

ORDER

¶ 1 *Held:* The appellate court affirmed the trial court's judgment, finding appointed counsel substantially complied with Illinois Supreme Court rules in conjunction with defendant's successive postconviction petition.

¶ 2 In April 2004, a jury found defendant, Ronald W. Young, guilty of first degree murder. In May 2004, the trial court sentenced him to 65 years in prison. In September 2006, this court affirmed defendant's conviction and sentence. In June 2008, defendant filed an amended postconviction petition, which the trial court denied. This court affirmed the dismissal of the postconviction petition. In April 2013, defendant filed a *pro se* petition for leave to file a successive postconviction petition. The trial court allowed the petition for leave and appointed counsel. In January 2014, the State filed an answer. In February 2014, the court found defendant's petition without merit.

¶ 3 On appeal, defendant argues postconviction counsel failed to satisfy the

requirements of Illinois Supreme Court Rule 651(c) (eff. Feb. 6, 2013). We affirm.

¶ 4

I. BACKGROUND

¶ 5 In June 2003, a grand jury indicted defendant on one count of first degree murder (720 ILCS 5/9-1(a)(1) (West 2002)), alleging he, without lawful justification and with the intent to kill Latroy Creighton, shot Creighton with a handgun, causing his death on May 10, 2003. In April 2004, a jury found defendant guilty. In May 2004, the trial court sentenced him to 65 years in prison.

¶ 6 On direct appeal, defendant argued (1) the trial court erred in admitting statements made by the victim prior to his death, (2) the court erred in denying the jury's request for transcripts of two witnesses, (3) the court erred in admitting testimony of a witness regarding an out-of-court statement made by the victim, (4) the State failed to prove him guilty beyond a reasonable doubt, and (5) his sentence was excessive. This court affirmed defendant's conviction and sentence. *People v. Young*, No. 4-04-0681 (Sept. 7, 2006) (unpublished order under Supreme Court Rule 23).

¶ 7 In August 2007, defendant filed a *pro se* petition for postconviction relief under the Post-Conviction Hearing Act (Act) (725 ILCS 5/122-1 to 122-8 (West 2006)). In June 2008, defendant, through appointed counsel, filed an amended postconviction petition. Defendant alleged multiple constitutional violations, including the claim he was denied the effective assistance of trial counsel because counsel did not call Jason Jones as an alibi witness. In August 2008, the State filed a motion to dismiss.

¶ 8 In October 2008, the trial court denied the State's motion and continued the case for an evidentiary hearing on defendant's claims that counsel was ineffective for failing to call Jones as an alibi witness and counsel denied defendant the opportunity to testify at trial.

Following a hearing in December 2008, the court denied the amended postconviction petition. This court affirmed the trial court's dismissal of the petition. *People v. Young*, No. 4-08-0985 (May 11, 2010) (unpublished order under Supreme Court Rule 23).

¶ 9 In April 2013, defendant filed a *pro se* petition for leave to file a successive postconviction petition. Defendant also filed a *pro se* petition, wherein he alleged actual innocence and claimed to have met an inmate named Neville Ford, who allegedly witnessed the murder of Creighton. To the petition, defendant attached Ford's affidavit, wherein Ford claimed to have witnessed a man, whom he only knew by the name "Black," commit the murder. The trial court allowed defendant's request to file the successive postconviction petition and appointed counsel to represent him.

¶ 10 In November 2013, defense counsel, Bruce Ratcliffe, filed an amended successive postconviction petition. In support thereof, Ratcliffe stated he had reviewed the court file. While he had not reviewed the trial transcript, he stated "the issues presented [were] outside the issues in the trial transcript." Ratcliffe also stated he met with defendant in July 2013. The petition stated defendant met Ford at Menard Correctional Center and Ford stated he witnessed the shooting for which defendant had been convicted. Ford told defendant a person he knew as "Black" was the shooter and he could identify him if and when his identity became known. Further investigation identified Robbie Sutton as "Black."

¶ 11 In January 2014, the State filed an answer to the amended petition. The State attached documentation indicating Ford was incarcerated in the Illinois Department of Corrections on May 10, 2003, the day of Creighton's murder. Thus, the State argued the documentation "directly and irrefutably contradict[s]" the basis for defendant's claim of actual innocence.

¶ 12 In February 2014, the trial court found the State's position to be "well-taken." Given that Ford was incarcerated at the time of the murder, the court found defendant's "petition to file a successive post-conviction petition is not only outrageous, but is totally without merit." Accordingly, the court denied "defendant's request."

¶ 13 Defendant filed a *pro se* petition for rehearing, arguing that although Ford may have been incarcerated at the time of the murder, he had information about the crime. Thus, defendant sought a hearing to determine the source and credibility of that information. In March 2014, the trial court denied the petition for rehearing. This appeal followed.

¶ 14 II. ANALYSIS

¶ 15 Defendant argues the record does not demonstrate postconviction counsel satisfied the requirements of Illinois Supreme Court Rule 651(c) (eff. Feb. 6, 2013) in conjunction with the filing of the amended successive postconviction petition. We disagree.

¶ 16 The Act "provides a mechanism for criminal defendants to challenge their convictions or sentences based on a substantial violation of their rights under the federal or state constitutions." *People v. Morris*, 236 Ill. 2d 345, 354, 925 N.E.2d 1069, 1075 (2010). A proceeding under the Act is a collateral proceeding and not an appeal from the defendant's conviction and sentence. *People v. English*, 2013 IL 112890, ¶ 21, 987 N.E.2d 371. The defendant must show he suffered a substantial deprivation of his federal or state constitutional rights. *People v. Caballero*, 228 Ill. 2d 79, 83, 885 N.E.2d 1044, 1046 (2008).

¶ 17 The Act establishes a three-stage process for adjudicating a postconviction petition. *English*, 2013 IL 112890, ¶ 23, 987 N.E.2d 371. At the first stage, the trial court must review the postconviction petition and determine whether "the petition is frivolous or is patently without merit." 725 ILCS 5/122-2.1(a)(2) (West 2012). If the petition is not dismissed at the

first stage, it advances to the second stage. 725 ILCS 5/122-2.1(b) (West 2012).

¶ 18 At the second stage, the trial court may appoint counsel, who may amend the petition to ensure defendant's contentions are adequately presented. *People v. Pendleton*, 223 Ill. 2d 458, 472, 861 N.E.2d 999, 1007 (2006); 725 ILCS 5/122-4 (West 2012). Also at the second stage, the State may file an answer or move to dismiss the petition. 725 ILCS 5/122-5 (West 2012). A petition may be dismissed at the second stage "only when the allegations in the petition, liberally construed in light of the trial record, fail to make a substantial showing of a constitutional violation." *People v. Hall*, 217 Ill. 2d 324, 334, 841 N.E.2d 913, 920 (2005). If a constitutional violation is established, "the petition proceeds to the third stage for an evidentiary hearing." *People v. Harris*, 224 Ill. 2d 115, 126, 862 N.E.2d 960, 967 (2007); 725 ILCS 5/122-6 (West 2012).

¶ 19 Consistent with the above principles, the "Act generally contemplates the filing of only one postconviction petition." *People v. Ortiz*, 235 Ill. 2d 319, 328, 919 N.E.2d 941, 947 (2009). The Act expressly provides that "[a]ny claim of substantial denial of constitutional rights not raised in the original or an amended petition is waived." 725 ILCS 5/122-3 (West 2012); see also *People v. Pitsonbarger*, 205 Ill. 2d 444, 458, 793 N.E.2d 609, 620-21 (2002) (stating "the procedural bar of waiver is not merely a principle of judicial administration; it is an express requirement of the statute"). "A defendant faces immense procedural default hurdles when bringing a successive post-conviction petition," which "are lowered in very limited circumstances" as successive petitions "plague the finality of criminal litigation." *People v. Tenner*, 206 Ill. 2d 381, 392, 794 N.E.2d 238, 245 (2002). However, our supreme court has found "the statutory bar to a successive postconviction petition will be relaxed when fundamental fairness so requires." *People v. Lee*, 207 Ill. 2d 1, 5, 796 N.E.2d 1021, 1023 (2003). A

successive postconviction petition may only be filed if leave of court is granted. 725 ILCS 5/122-1(f) (West 2012).

¶ 20 A defendant's right to postconviction counsel is statutory and not constitutional. *People v. Suarez*, 224 Ill. 2d 37, 42, 862 N.E.2d 977, 979 (2007); 725 ILCS 5/122-4 (West 2012). Moreover, the Act requires postconviction counsel to provide a "reasonable level of assistance" to a defendant. *People v. Moore*, 189 Ill. 2d 521, 541, 727 N.E.2d 348, 358-59 (2000). To ensure a postconviction petitioner receives that reasonable level of assistance, Rule 651(c) imposes specific duties on postconviction counsel. *Suarez*, 224 Ill. 2d at 42, 862 N.E.2d at 979. "Rule 651(c) requires that the record show counsel has: (1) consulted with the defendant either by mail or in person to ascertain his claims of deprivation of constitutional rights; (2) examined the record of the trial court proceedings; and (3) made any amendments to the *pro se* petition 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).

¶ 21 Compliance with Rule 651(c) may be shown by the filing of a certificate representing counsel has fulfilled his duties. *People v. Perkins*, 229 Ill. 2d 34, 50, 890 N.E.2d 398, 407 (2007). "The filing of a Rule 651(c) certificate creates a presumption of compliance with the rule." *People v. Bell*, 2014 IL App (3d) 120637, ¶ 10, 16 N.E.3d 910. When counsel fails to file a certificate in compliance with Rule 651(c), a court may deem the error harmless if the record shows counsel satisfied the rule's requirements. *Lander*, 215 Ill. 2d at 584, 831 N.E.2d at 600.

¶ 22 Initially, the State argues defendant was not entitled to the appointment of counsel, and thus Rule 651(c) did not apply, because the trial court reconsidered its initial grant of leave to file the successive petition and denied leave. We find this contention without merit.

After defendant filed his petition for leave to file a successive postconviction petition, the court allowed the request and appointed counsel to represent him on the successive petition.

Thereafter, counsel filed the amended petition. In response, the State filed its answer, described the court's duties at stage two, and requested the amended petition be denied. These facts carry all the hallmarks of the first and second stages of postconviction proceedings following the grant of leave to file a successive petition. Although the court in its written order indicated it was denying defendant's request set forth in the petition to file a successive petition, nowhere did the court indicate it was reconsidering its prior decision to grant leave. Moreover, the docket entry shows the court denied defendant's successive petition after finding the claims frivolous and patently without merit. Accordingly, we find Rule 651(c) did apply in this case.

¶ 23 Defendant argues postconviction counsel did not (1) examine the record of the trial court proceedings and (2) indicate he made any amendments to the *pro se* petition necessary for an adequate presentation of defendant's contentions. In the reply brief, appellate counsel concedes the amended petition likely satisfied the second contention of error. Thus, we will focus our analysis on the first contention.

¶ 24 In the case *sub judice*, defendant's *pro se* petition alleged a fellow prison inmate told him he had seen someone else commit the shooting, thereby establishing defendant's claim of actual innocence. Thus, the petition alleged defendant was actually innocent of Creighton's murder without regard to the sufficiency of the evidence at trial.

¶ 25 "Rule 651(c) requires post-conviction counsel only to examine 'as much of the transcript of proceedings as is necessary to adequately present and support those constitutional claims raised by the petitioner.'" *People v. Turner*, 187 Ill. 2d 406, 411-12, 719 N.E.2d 725, 728 (1999) (quoting *People v. Davis*, 156 Ill. 2d 149, 164, 619 N.E.2d 750, 758 (1993)). Counsel is

"not required to examine more than that portion of the proceedings necessary to adequately present defendant's claim." *Davis*, 156 Ill. 2d at 165, 619 N.E.2d at 759.

¶ 26 Here, appointed counsel indicated in the amended petition that he personally met with defendant and reviewed the trial court file. Although counsel indicated he did not review the trial transcript, he stated "the issues presented [were] outside the issues in the trial transcript." He then set forth defendant's claim that inmate Ford claimed to have witnessed the shooting and the shooter was known to him as "Black." Further, after continued investigation by defendant and his family, counsel alleged Robbie Sutton had been identified as "Black."

¶ 27 "[T]he purpose of Rule 651(c) is to ensure that counsel shapes the petitioner's claims into proper legal form and presents those claims to the court." *Perkins*, 229 Ill. 2d at 44, 890 N.E.2d at 403. Here, counsel presented defendant's claim to the trial court in the amended petition, and defendant does not contend the petition omits any other claims. Moreover, the claim was presented in such a way that the State could respond in its answer and the court could make a ruling on the sufficiency of the amended petition. Because counsel was not required to examine more than that portion of the proceedings necessary to adequately present defendant's claim, we find counsel substantially complied with Rule 651(c).

¶ 28 III. CONCLUSION

¶ 29 For the reasons stated, we affirm the trial court's judgment. As part of our judgment, we award the State its \$50 statutory assessment against defendant as costs of this appeal.

¶ 30 Affirmed.