

No. 1-13-3345

**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. 95 CR 6709
	)	
LAWRENCE BROOKS,	)	Honorable
	)	Luciano Panici,
Defendant-Appellant.	)	Judge Presiding.

---

JUSTICE HARRIS delivered the judgment of the court.  
Presiding Justice Liu and Justice Cunningham concurred in the judgment.

**O R D E R**

¶ 1 *Held:* Defendant failed to overcome the presumption of reasonable assistance created by the filing of a Rule 651(c) certificate by post-conviction counsel.

¶ 2 Defendant Lawrence Brooks appeals from an order of the circuit court of Cook County granting the State's motion to dismiss his successive petition for relief filed pursuant to the Post-Conviction Hearing Act (Act) (725 ILCS 5/122-1 *et seq.* (West 2010)). On appeal, defendant

raises no issue regarding the merits of the claims set forth in his petition. He solely contends that he was denied the reasonable assistance of post-conviction counsel, who averred in a Rule 651(c) certificate (Ill. S. Ct. R. 651(c) (eff. Dec. 1, 1984)) that she read the record of proceedings at trial, but could not have reviewed all of the transcripts supporting his claims because they were not part of the record.

¶ 3 On May 2, 1995, defendant was charged in a multi-count indictment with attempted murder, armed violence and aggravated battery. At defendant's request for a substitution of judge (SOJ), his case was transferred to Judge Robert Krop, who presided over defendant's first jury trial, which ended in a mistrial on October 3, 1997.

¶ 4 Following that, defendant's case was returned to the call of the same judge. Defendant then filed a *pro se* motion for SOJ pursuant to section 114-5 of the Code of Criminal Procedure (725 ILCS 5/114-5 (West 1996)), asserting that Judge Krop was so prejudiced against him that he could not receive a fair trial from him. Defendant attached his own affidavit to the motion, stating that since the judge was assigned to his case, there were rulings and deprivations of rights to due process and a fair trial as guaranteed by the United States and Illinois constitutions. Defendant then listed 11 dates on which the judge made 12 rulings from July 31, 1996, to October 3, 1997.

¶ 5 Defense counsel filed a separate SOJ motion, generally asserting that defendant could not receive a fair trial before Judge Krop because he was prejudiced against him, but provided no further detail. After a hearing on January 20, 1998, Judge Krop denied the SOJ motion filed by counsel as untimely and for failing to allege specific instances of prejudice. The record does not reflect a ruling on defendant's *pro se* SOJ motion.

¶ 6 Judge Krop then presided over defendant's second jury trial in August 1998, in which defendant was found guilty of armed violence (predicated on aggravated battery) and aggravated battery, then sentenced to concurrent, respective terms of 30 and 10 years' imprisonment. Defendant's aggravated battery conviction and sentence were later vacated by this court, and the case was remanded for resentencing on defendant's armed violence conviction because the statute under which that sentence was imposed had been found unconstitutional in *People v. Cervantes*, 189 Ill. 2d 80 (1999). *People v. Brooks*, No. 1-98-3570 (2000) (unpublished summary order under Supreme Court Rule 23). On remand, defendant was sentenced to 30 years in prison for armed violence.

¶ 7 While that appeal was pending, defendant filed a *pro se* post-conviction petition, alleging, *inter alia*, that the trial court erred in denying his SOJ motion following his first trial. The circuit court summarily dismissed defendant's petition, and his appeal from that ruling was consolidated with his appeal from the resentencing order. This court affirmed defendant's 30-year sentence and the dismissal of his post-conviction petition. *People v. Brooks*, Nos. 1-01-2408 and 1-02-0238 (consolidated) (2005) (unpublished summary order under Supreme Court Rule 23).

¶ 8 In 2005, defendant filed a *pro se* petition for *habeas corpus* relief asserting, among other claims, that he was deprived of his right to a fair trial by the denial of his SOJ motion and that his trial counsel and appellate counsel were ineffective for failing to challenge that ruling. The circuit court reclassified that filing as a post-conviction petition, noting that the filing would be considered a successive petition, but did not rule on its merits. On appeal, this court held that despite the circuit court's reclassification, no successive petition had ultimately been filed and thus, there was no order to be appealed. *People v. Brooks*, No. 1-07-2446 (2010) (unpublished

order under Supreme Court Rule 23). The Illinois Supreme Court denied leave to appeal, but issued a supervisory order directing this court to vacate its judgment and remand the cause to the circuit court to allow defendant to file a successive post-conviction petition. *People v. Brooks*, 237 Ill. 2d 564 (2010).

¶ 9 On June 15, 2011, defendant filed the *pro se* successive petition that is the subject of this appeal. Defendant asserted therein that his constitutional rights were violated because his *habeas* petition was not ruled upon within 90 days and that the court had allowed an "untimely filing of dismissal." Defendant also attached, among other materials, his *habeas* petition, his *pro se* SOJ motion and accompanying affidavit and excerpts from transcripts of various court proceedings in his case.

¶ 10 Counsel was appointed to represent defendant, and on December 16, 2011, counsel appeared on defendant's behalf, stating, *inter alia*, that she had requested certain transcripts. At appearances in August and November 2012, counsel told the court that she had received the transcripts and was reading the record.

¶ 11 On April 19, 2013, counsel informed the court that she had reviewed the petition and discussed it with defendant, and that she would be filing a certificate pursuant to Rule 651(c). In her certificate, counsel attested that she had consulted with defendant to ascertain his contentions of deprivations of his constitutional rights and had "obtained and read the report of proceedings at trial and sentencing in this case." Counsel further averred that she had not prepared an amended petition because defendant's "previously-filed *pro se* petition for post-conviction relief adequately sets forth the petitioner's claims of deprivation of his constitutional rights."

¶ 12 The State moved to dismiss defendant's successive petition, asserting that defendant could not now challenge the trial court's ruling on the SOJ motion in a post-conviction filing.

The State also asserted that defendant had forfeited his claims of ineffectiveness of trial counsel by failing to raise them in his direct appeal, and that appellate counsel was not ineffective for failing to raise meritless issues on appeal.

¶ 13 After a hearing, the circuit court found that the trial court correctly considered the SOJ motion filed by counsel, rather than defendant's *pro se* motion, because defendant was not entitled to hybrid representation. The court also found that defendant had failed to set forth a cognizable claim of ineffective assistance of trial or appellate counsel and noted that defendant had waived his claims because they were of record and could have been raised on direct appeal, but were not. Accordingly, the court granted the State's motion to dismiss defendant's successive petition.

¶ 14 On appeal, defendant solely contends that he was deprived of the reasonable assistance of post-conviction counsel. He claims the filing of a Rule 651(c) certificate by counsel only created a presumption of compliance that he has rebutted by the absence of a complete set of transcripts in the record. Defendant specifically refers to the absence of transcripts from four of the dates listed in the affidavit he attached to his *pro se* SOJ motion. He asserts that it is unclear if his post-conviction counsel reviewed the record of the proceedings on those dates in order to consider his claims of Judge Krop's alleged bias against him. Accordingly, he contends the dismissal of his post-conviction petition should be reversed and his case remanded to the circuit court for a determination as to whether counsel complied with Rule 651(c).

¶ 15 We review an attorney's compliance with a supreme court rule, as well as the dismissal of a post-conviction petition upon the State's motion, *de novo*. *People v. Profit*, 2012 IL App (1st) 101307, ¶ 17. Under the Act, petitioners are entitled to a "reasonable" level of assistance from appointed post-conviction counsel. *People v. Perkins*, 229 Ill. 2d 34, 42 (2007). To ensure this

reasonable level of assistance, Rule 651(c) imposes three duties. *Id.* 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).

¶ 16 The filing of a Rule 651(c) certificate creates a presumption that post-conviction counsel has provided reasonable assistance. *Profit*, 2012 IL App (1st) 101307, ¶ 19. Once a certificate is filed, the burden falls on defendant to overcome that presumption by demonstrating counsel's failure to substantially comply with the duties mandated by the rule. *Id.* ¶¶ 18-19. If no contrary proof is offered, the party that has the benefit of the presumption prevails. *In re J.A.*, 316 Ill. App. 3d 553, 562 (2000), citing *Diederich v. Walters*, 65 Ill. 2d 95, 100 (1976).

¶ 17 In the case at bar, defendant claims that he has rebutted the presumption of compliance created by the filing of the Rule 651(c) certificate where transcripts of the proceedings of 4 of the 12 dates he listed in his *pro se* SOJ motion affidavit are not included in the record on appeal. He contends that because the documents necessary to counsel's review of his claims are missing, the record on appeal rebuts counsel's averment that she complied with the reading requirement of the rule.

¶ 18 We initially observe that substantial compliance with the rule does not require appointed post-conviction counsel to examine the entirety of the petitioner's trial proceedings, but rather, only "as much of the transcript of proceedings as is necessary to adequately support those constitutional claims raised by the petitioner." *People v. Davis*, 156 Ill. 2d 149, 164-65 (1993). Counsel's responsibility, therefore, is defined by the claims defendant raises in his petition. *Id.* at 164.

¶ 19 In the successive petition filed by defendant in this case, defendant asserted procedural errors by the court in considering and dismissing his *habeas* petition, which, he claimed violated his constitutional rights. He attached thereto his *habeas* petition, which the circuit court had previously reclassified as a post-conviction petition, and also his *pro se* SOJ motion and affidavit, and excerpts from various hearings and rulings by the court in his case. The circuit court granted the State's motion to dismiss after considering defendant's claims, and defendant raises no contentions on appeal that those issues were wrongly decided. See *id.* at 162. Instead, he focuses solely on the missing transcripts and their import on his claims of unreasonable assistance. We find none.

¶ 20 Under the facts presented, we find that counsel's duty to examine the record did not extend to the transcripts from the dates listed in his SOJ affidavit where he did not refer to them in his subsequently filed and reclassified *habeas* petition, nor did he articulate an argument concerning them. Moreover, the transcript of the hearing on trial counsel's SOJ motion, which defendant included in his successive petition filing, discloses that counsel told the court that he knew the motion was untimely and that he only filed it at defendant's insistence. In addition, counsel advised the court that his conversations with defendant and his participation in defendant's first jury trial revealed no substantive claims of prejudice on the part of the judge to include in the motion and thus, none were stated. Accordingly, we conclude that defendant has failed to rebut the presumption that appointed post-conviction counsel complied with the reading requirement of Rule 651(c), where he provided no evidence to support his underlying claims that counsel's duty to examine extended to the aforementioned dates.

¶ 21 Defendant, nevertheless, cites *People v. Carter*, 223 Ill. App. 3d 957, 962 (1992), to assert that there must be an "explicit showing in the record" that post-conviction counsel fulfilled

the requirements of Rule 651(c). However, in *Carter* and the cases discussed therein, no Rule 651(c) certificate was filed by counsel (*id.* at 960-62), and we thus find his reliance on that authority misplaced, since counsel here did file a certificate.

¶ 22 In this respect, we find the case at bar analogous to *People v. Turner*, 187 Ill. 2d 406, 411-12 (1999), where the defendant argued that his post-conviction counsel did not comply with the requirement of Rule 651(c) that counsel examine the trial record because transcripts for five dates in the defendant's second sentencing proceedings were not included in the record on appeal. The supreme court found no rule violation by counsel's failure to examine those transcripts, even if they existed, because those transcripts had no relevance to the petitioner's claims. *Id.* Here, in addition to finding that defendant has not rebutted the presumption created by the filing of the Rule 651(c) certificate by post-conviction counsel, defendant has made no showing of the relevance of those transcripts to his stated claims.

¶ 23 Accordingly, we affirm the order of the circuit court of Cook County granting the State's motion to dismiss defendant's successive post-conviction petition.

¶ 24 Affirmed.