

**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).

2016 IL App (3d) 140241-U

Order filed March 18, 2016

---

IN THE  
APPELLATE COURT OF ILLINOIS  
THIRD DISTRICT

A.D., 2016

THE PEOPLE OF THE STATE OF ILLINOIS,	)	Appeal from the Circuit Court of the 10th Judicial Circuit, Tazewell County, Illinois,
Plaintiff-Appellee,	)	
v.	)	Appeal No. 3-14-0241
JEFFREY ADKINSON,	)	Circuit No. 10-CF-437
Defendant-Appellant.	)	Honorable Michael E. Brandt, Judge, Presiding.

---

JUSTICE LYTTON delivered the judgment of the court.  
Justice Holdridge concurred in the judgment.  
Justice McDade specially concurred.

---

**ORDER**

¶ 1 *Held:* Defendant received unreasonable assistance of postconviction counsel, and the cause is remanded for second-stage proceedings.

¶ 2 Defendant, Jeffrey Adkinson, appeals from the second-stage dismissal of his postconviction petition. Defendant argues that the court erred in dismissing his petition, and he received unreasonable assistance of postconviction counsel. We reverse and remand with directions.

## FACTS

¶ 3

¶ 4 Defendant was charged by indictment with two counts of aggravated criminal sexual abuse (720 ILCS 5/12-16(d) (West 2010)) and one count of predatory criminal sexual assault of a child (720 ILCS 5/12-14.1(a)(1) (West 2010)). On September 9, 2010, trial counsel filed a motion for a fitness examination and hearing. In the motion, trial counsel said that he interviewed defendant at the jail and observed that defendant: did not properly care for himself; saw and heard things that had no basis in reality, *i.e.*, he heard voices that taunted him and instructed him to do things; spoke rapidly and inaudibly; refused to attend court proceedings; was delusional; and was unwilling or unable to eat. Due to these observations, counsel believed there was a *bona fide* doubt as to defendant's fitness to stand trial. The motion was not heard, and the case proceeded to a guilty plea hearing.

¶ 5

On December 14, 2010, defendant entered negotiated pleas of guilty to all three charges in exchange for concurrent 3-year sentences on the two aggravated criminal sexual abuse charges and a consecutive 12-year sentence on the predatory criminal sexual assault charge. Before accepting the plea, defendant told the court that he was in good physical and mental health and he was taking prescription medication for "psychotic" and stomach issues. Defendant said he took both medications as directed, the medications did not cloud his judgment, he was thinking clearly, and he understood the proceedings. Defendant also indicated that he understood the charges and potential sentencing ranges.

¶ 6

Trial counsel noted that when he was appointed, defendant was noncommunicative, and counsel had filed a motion for a fitness evaluation. Seven days later, defendant was "lucid, coherent, understanding, comprehending, [and] able to communicate" and counsel did not seek a hearing on the motion.

¶ 7 The State read the factual basis for the plea. Defendant indicated that the basis was accurate saying "I guess, yeah. I say yes, because I don't remember half of it, Your Honor, so I can't really—I would go with the flow, but yes."<sup>1</sup> The court accepted defendant's pleas and entered the sentences recommended by the State. Defendant did not file a postplea motion or notice of appeal.

¶ 8 On March 25, 2013, defendant filed a *pro se* postconviction petition. In his petition, defendant argued that he received ineffective assistance of counsel because trial counsel: (1) did not pursue a possible *Miranda* violation; (2) failed to investigate a possible defense based on DNA evidence; and (3) proceeded with the case in spite of defendant's known medication issues, in-court loss of consciousness, and poor judgment. The court appointed postconviction counsel, and counsel filed an amended petition. The amended petition contested: (1) the use of defendant's prearrest statements and the evidence collection procedures; (2) the validity of defendant's pleas; and (3) trial counsel's failure to investigate a defense. Postconviction counsel supplemented the amended petition with an affidavit, police reports, laboratory reports, and the report of proceedings from the plea hearing. The State filed a motion to dismiss the petition, and after a hearing, the court granted the State's motion.

¶ 9 ANALYSIS

---

<sup>1</sup>We note that the report of proceedings that was filed by postconviction counsel in support of the amended postconviction petition differs with the report of proceedings filed on appeal. In the version filed in support of the petition, defendant says "I guess, yeah. I *tell you yes, because it never happened*, Your Honor, so I can't really—I would go with the flow, but yes" (Emphasis added).

¶ 10 Defendant argues that postconviction counsel provided unreasonable assistance where counsel failed to support defendant's claim that trial counsel was ineffective by allowing defendant to plead guilty without a fitness determination. We agree that counsel acted unreasonably when he did not properly support the petition with evidence documenting defendant's fitness concerns.

¶ 11 Section 122-4 of the Post-Conviction Hearing Act (Act) entitles an indigent defendant to appointed counsel when a postconviction petition is advanced to second-stage proceedings. 725 ILCS 5/122-4 (West 2012). A postconviction defendant is entitled to a "reasonable level of assistance" of counsel. *People v. Suarez*, 224 Ill. 2d 37, 42 (2007). Illinois Supreme Court Rule 651(c) (eff. Feb. 6, 2013) imposes specific duties on counsel to assure that a defendant receives a reasonable level of assistance. Rule 651(c) requires that the record show that counsel has: (1) consulted with defendant to ascertain his contentions of deprivation of constitutional rights; (2) examined the record of trial proceedings; and (3) has made any amendments to the *pro se* petition that are necessary for an adequate presentation of defendant's contentions. We review the second-stage dismissal of a postconviction petition and postconviction counsel's compliance with Rule 651(c) *de novo*. *Suarez*, 224 Ill. 2d at 42.

¶ 12 Here, defendant filed a *pro se* petition alleging, in part, that his plea was not entered knowingly and voluntarily because his medication caused him to lose consciousness and suffer lapses in judgment. Postconviction counsel further developed this argument into an attack on the validity of the plea but did not support it with records or other evidence of defendant's mental unfitness as required by section 122-2 of the Act. 725 ILCS 5/122-2 (West 2012).

¶ 13 Concerns about defendant's fitness to stand trial first arose when trial counsel filed a motion for a fitness evaluation and hearing. Although this motion was not heard, the record

documents that defendant's psychiatric issues persisted through the time of the plea hearing when defendant told the court that he was taking psychiatric medications. While defendant was in pretrial custody, the Tazewell County jail was required to document and record defendant's medical and mental health services. 20 Ill. Adm. Code 701.90 (2004). These medical and mental health records would have filled in the gaps in the trial court record pertaining to defendant's fitness to plead guilty. Therefore, to adequately present defendant's *pro se* contention of unfitness to plead guilty, as required by Rule 651(c) and section 122-2 of the Act, postconviction counsel should have included with the amended petition trial counsel's motion that raised the initial fitness concerns as well as defendant's medical and mental health records from the Tazewell County jail. Because this support was missing from the amended petition, we conclude that defendant received unreasonable assistance of postconviction counsel.

¶ 14 We would be remiss if we did not note that counsel also did not state in the amended petition why the fitness allegations were not supported by trial counsel's original fitness motion or defendant's mental health records. See 725 ILCS 5/122-2 (West 2012). As a result of these omissions, we reverse the court's dismissal and remand the cause with directions to appoint new postconviction counsel and conduct *de novo* second-stage proceedings. As our resolution of this issue requires *de novo* proceedings, we take no position on the merits of the petition or basis for the trial court's dismissal.

¶ 15 **CONCLUSION**

¶ 16 The judgment of the circuit court of Tazewell County is reversed and remanded with directions.

¶ 17 Reversed and remanded with directions.

¶ 18 JUSTICE McDADE, specially concurring.

¶ 19 I concur in the decision of the majority to remand this matter for further proceedings. I am, however, very concerned about the discrepancy between the two reports of proceedings, prepared by a single court reporter, on the same hearing. The transcripts present two different versions of the defendant's statement on a critical issue.

¶ 20 The appellate court is totally reliant on an accurate record of the trial court proceedings for the fairness and correctness of our decisions. Two significantly different accounts of a single instance of defendant's sworn testimony is beyond troubling—it potentially threatens due appellate process for both the defendant and the State. It is unclear to me how this happened and, more importantly, how it gets rectified in a way that is fair to both parties. I fear it may prove to be a fatal flaw.