

NOTICE
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2016 IL App (5th) 130261-U

NO. 5-13-0261

IN THE

APPELLATE COURT OF ILLINOIS

FIFTH DISTRICT

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).

THE PEOPLE OF THE STATE OF ILLINOIS,)	Appeal from the
)	Circuit Court of
Plaintiff-Appellee,)	Massac County.
)	
v.)	No. 00-CF-91
)	
MICHAEL REEVES,)	Honorable
)	Mark M. Boie,
Defendant-Appellant.)	Judge, presiding.

JUSTICE MOORE delivered the judgment of the court.
Presiding Justice Schwarm and Justice Welch concurred in the judgment.

ORDER

¶ 1 *Held:* Trial court's dismissal, at the second stage of proceedings, of the defendant's petition for postconviction relief is affirmed where the defendant received a reasonable level of assistance from postconviction counsel, where compliance with Illinois Supreme Court Rule 651(c) is demonstrated by the record on appeal, and where the petition is without merit.

¶ 2 The defendant, Michael Reeves, appeals the dismissal, at the second stage of proceedings and upon the motion of the State, of his petition for postconviction relief.

For the following reasons, we affirm.

¶ 3

FACTS

¶ 4 The facts necessary to our disposition of this appeal follow. On April 4, 2013, counsel appointed to assist the defendant filed the amended postconviction petition (the petition) that is at issue in this appeal. Therein, counsel alleged that the defendant's right to a speedy trial was violated under the Interstate Agreement on Detainers (IAD) (730 ILCS 5/3-8-9 (West 2012)). In support thereof, counsel alleged that the filings of the defendant in the trial court demonstrate that the defendant "did everything within his ability to waive extradition and get himself returned to Illinois to face the charges against him."

¶ 5 On April 24, 2013, the State filed a motion to dismiss the petition, contending, *inter alia*, that the defendant did not properly comply with the requirements of the IAD, and that therefore the petition's claims were without merit. On May 2, 2013, the trial judge entered a detailed written order in which he granted the State's motion to dismiss the petition. Therein, the trial judge ruled, *inter alia*, that the defendant's IAD claim had been "fully addressed" in previous litigation in this case, writing that this court had found that the defendant had failed "to properly initiate proceedings under the IAD." The trial judge concluded that the claims in the petition "are barred by the principles of *res judicata* and waiver and should be dismissed in their entirety." This appeal, which we have determined is properly before us, followed.

¶ 6

ANALYSIS

¶ 7 On appeal, the defendant contends the trial judge's order dismissing the petition should be reversed because, according to the defendant, the defendant received "an

unreasonable level of assistance" from postconviction counsel, as evidenced by the fact that postconviction counsel: (1) did not file a Rule 651(c) certificate, and (2) did not include an allegation of ineffective assistance of appellate and trial counsel in the petition, said allegation being "necessary in order to avoid procedural default and to constitutionalize the statutory speedy trial claim."

¶ 8 As both this court and the Illinois Supreme Court have long held, there exists no constitutional right to counsel in postconviction proceedings. See, e.g., *People v. Vasquez*, 356 Ill. App. 3d 420, 422-23 (2005). To the contrary, the right to assistance in such cases has been deemed a matter of grace and favor bestowed by the General Assembly. *Id.* at 423. Under Illinois Supreme Court Rule 651(c), counsel assisting those seeking relief by means of a postconviction petition must provide a " 'reasonable level of assistance.' " *Id.* The Illinois Supreme Court has held that a reasonable level of assistance "does not include the 'exploration, investigation and formulation of potential claims.' " *Id.* at 425 (quoting *People v. Davis*, 156 Ill. 2d 149, 163 (1993)). Nevertheless, Rule 651(c) requires "that the record in a post-conviction proceeding contain a showing that the petitioner's attorney consulted with him, examined the record of the trial proceedings and made any amendments to the *pro se* petition necessary for adequate presentation of the petitioner's contentions." *People v. Wren*, 223 Ill. App. 3d 722, 730 (1992). This requirement of Rule 651(c) may be met by a certificate of compliance filed by counsel, or it may be established by the record itself. *Id.* To demonstrate that postconviction counsel did not provide a reasonable level of assistance because postconviction counsel did not amend a *pro se* petition, a defendant bears the burden of

"showing that the petition could have been amended to state a case upon which relief could be granted." *Id.* at 731; see also *Vasquez*, 356 Ill. App. 3d at 425.

¶ 9 In the case at bar, it is undisputed that postconviction counsel did not file a certificate pursuant to Rule 651(c). The defendant contends that a review of the record demonstrates that postconviction counsel did not adequately comply with the rule. The defendant does not contend that postconviction counsel failed to adequately consult with him, and/or to adequately examine the record of the proceedings below. Accordingly, the defendant has forfeited any claims related to those points.¹ See Ill. S. Ct. R. 341(h)(7) (eff. Feb. 6, 2013) (argument must contain the contentions of the appellant, the reasons therefor, and the citation of authorities; points not argued in an opening brief are forfeited and shall not be raised in the reply brief, in oral argument, or in a petition for a rehearing). Instead, the defendant contends only that postconviction counsel failed to "make the necessary amendments" to the petition "to save it from procedural default and insulate it from dismissal on the grounds that it did not allege a constitutional violation." In support of this argument, the defendant points to the decision of the Supreme Court of Illinois in *People v. Perkins*, 229 Ill. 2d 34, 44 (2007), wherein the court reasoned that "[a]n adequate or proper presentation of a petitioner's substantive claims necessarily

¹Forfeiture notwithstanding, we agree with the State that a review of the record demonstrates that postconviction counsel adequately complied with the rule with regard to these points. Had appellate counsel made an argument to the contrary, that argument would have been without merit.

includes attempting to overcome procedural bars, including timeliness, that will result in dismissal of a petition if not rebutted." The defendant urges this court to "remand for further second-stage proceedings."

¶ 10 However, that remedy would be appropriate only if we determined that postconviction counsel did not provide the defendant with the reasonable level of assistance required by the law. See, e.g., *People v. Suarez*, 224 Ill. 2d 37, 52 (2007) (harmless error analysis not appropriate where lack of reasonable assistance *has been shown*). As noted above, to demonstrate that postconviction counsel did not provide a reasonable level of assistance because postconviction counsel did not amend a *pro se* petition, a defendant bears the burden of "showing that the petition could have been amended to state a case upon which relief could be granted." *People v. Wren*, 223 Ill. App. 3d 722, 731 (1992); see also *People v. Vasquez*, 356 Ill. App. 3d 420, 425 (2005).

¶ 11 As the State correctly points out, in the case at bar, the defendant has made no such showing. In his reply brief, the defendant does not take issue with the State's position, or attempt to make such a showing, instead claiming only that the State's analysis of the issue "is premature" and "irrelevant at this stage of the proceedings." Accordingly, the defendant has forfeited any argument on the merits of the issue. See Ill. S. Ct. R. 341(h)(7) (eff. Feb. 6, 2013) (argument must contain the contentions of the appellant, the reasons therefor, and the citation of authorities; points not argued in an opening brief are forfeited and shall not be raised in the reply brief, in oral argument, or in a petition for a rehearing). Forfeiture notwithstanding, we agree with the State that the

record on appeal belies any argument that the petition could have been amended to state a case upon which relief could be granted.

¶ 12 As the State points out, although the defendant had argued his IAD claim in the trial court, in the defendant's direct appeal following his conviction on retrial, appellate counsel for the defendant abandoned the IAD claim. The State notes valid reasons for appellate counsel's action, reasons that belie the contention that appellate counsel was ineffective. First, as the State notes, in previous filings in the trial court, the defendant had admitted both that he failed to comply with the IAD requirements and that trial counsel had provided him with extradition waiver forms that the defendant did not respond to, admissions that, as the State has been claiming for years, effectively eviscerated the defendant's IAD claim. Second, as the State again notes, because the defendant admitted that he did not respond to the forms provided to him by trial counsel, appellate counsel could not have successfully claimed ineffective assistance of trial counsel. As the trial judge noted in his order dismissing the petition, on May 15, 2004, trial counsel informed the defendant that "his *pro se* demand effort was inadequate under the IAD and forwarded him a complete set of detainer forms with instructions for filing them properly. On September 28, 2004, [trial] counsel informed the [c]ourt that the [d]efendant had failed to send him a proper IAD demand."

¶ 13 As the foregoing analysis demonstrates, even had postconviction counsel amended the petition as the defendant now claims it should have been amended, the petition would not have stated a case upon which relief could be granted. Accordingly, it was not unreasonable for postconviction counsel to decline to amend the petition to make a claim

that lacked merit. See, e.g., *People v. Vasquez*, 356 Ill. App. 3d 420, 428-29 (2005). We conclude that postconviction counsel provided the defendant with a reasonable level of assistance, and complied with the requirements of Rule 651(c). Moreover, the defendant's petition was without merit. Therefore, the trial judge did not err when he dismissed the petition.

¶ 14

CONCLUSION

¶ 15 For the foregoing reasons, we affirm the dismissal of the defendant's petition for postconviction relief.

¶ 16 Affirmed.