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IN THE  
APPELLATE COURT OF ILLINOIS  
FIRST DISTRICT

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THE PEOPLE OF THE STATE OF ILLINOIS,	)	Appeal from the Circuit Court of
	)	Cook County.
Plaintiff-Appellee,	)	
	)	No. 02 CR 25129
v.	)	
	)	Honorable Angela Munari Petrone,
ALVIN JONES,	)	Judge Presiding.
	)	
Defendant-Appellant.	)	

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JUSTICE GRIFFIN delivered the judgment of the court.  
Presiding Justice Pierce and Justice Mikva concurred in the judgment.

**ORDER**

¶ 1 *Held:* The circuit court's second-stage dismissal of defendant's postconviction petition affirmed where postconviction counsel provided reasonable assistance pursuant to Supreme Court Rule 651(c).

¶ 2 Defendant Alvin Jones appeals from an order of the circuit court of Cook County granting the State's motion to dismiss his postconviction petition. On appeal, defendant contends that his postconviction counsel failed to provide reasonable assistance because he did not amend the petition to add an allegation of ineffective assistance of appellate counsel to prevent forfeiture of defendant's *pro se* claims. We affirm.

¶ 3 Following a 2005 jury trial, defendant was convicted of the first-degree murder of 85-year-old Geneva Redding. In his motion for a new trial, defendant raised several allegations claiming that the trial court erred in admitting portions of testimony from three of the State's witnesses on the bases of hearsay, improper impeachment, improper evidence of custom or habit of the victim, and going beyond the scope of cross-examination. Defendant further argued that the court erred when it allowed the State to publish gruesome autopsy photos to the jury, and when it allowed five of the jury instructions. In addition, defendant argued that the State made various improper prejudicial statements in its closing argument. Defendant claimed that all of these errors violated his right to a fair trial, due process and equal protection. Following a hearing, the trial court found defendant's claims without merit and denied his posttrial motion. The court sentenced defendant to 50 years' imprisonment.

¶ 4 On direct appeal, defendant argued that his trial counsel rendered ineffective assistance because he failed to file a motion to suppress the evidence recovered by police after a warrantless search of his apartment. This court rejected that argument and affirmed defendant's conviction. *People v. Jones*, No. 1-05-3341 (2008) (unpublished order under Supreme Court Rule 23).

¶ 5 On November 5, 2007, while his direct appeal was still pending, defendant filed the instant *pro se* petition for relief under the Post-Conviction Hearing Act (Act) (725 ILCS 5/122-1 *et seq.* (West 2006)). Therein, defendant raised the same allegations, verbatim, that were raised in his motion for a new trial.

¶ 6 The record does not indicate when postconviction counsel was appointed, but shows that the case was regularly continued by agreement since the date defendant filed his petition. In March 2009, postconviction counsel stated that the parties had been waiting for this court to

issue its mandate for the direct appeal, which occurred in January. Counsel then requested the appellate records.

¶ 7 On multiple dates in 2011, counsel stated that he was investigating defendant's claims. On several dates throughout 2012 and 2013, counsel stated that he was working on a supplemental petition.

¶ 8 On December 5, 2013, counsel filed a supplemental postconviction petition and a certificate of compliance pursuant to Supreme Court Rule 651(c) (eff. Feb. 6, 2013). In the supplemental petition, counsel argued that the admission of prior consistent statements by the State's witness Cheryl Jones violated defendant's right to due process because defendant did not allege that Cheryl had a motive to testify falsely. Therefore, the State's use of her prior consistent statements improperly bolstered her credibility. Postconviction counsel also argued that appellate counsel was ineffective for failing to raise this issue on direct appeal. Counsel stated that the supplemental petition augmented the issues raised in defendant's *pro se* petition.

¶ 9 In his 651(c) certificate, counsel stated that he consulted with defendant by mail and in person to ascertain his contentions of deprivation of his constitutional rights. Counsel further stated that he obtained and read the report of proceedings from the trial and sentencing, and that he attempted to interview witnesses to properly address defendant's claims. Counsel also stated that he submitted a supplemental postconviction petition "that augments the concerns already expressed by Alvin Jones in his post-conviction petition."

¶ 10 The State moved to dismiss defendant's postconviction petition arguing that he failed to allege a cognizable constitutional claim under the Act. The State argued that all of defendant's claims of trial court error, improper questioning, and improper closing argument were barred by

forfeiture because they could have been raised on direct appeal. The State asserted that forfeiture justified dismissing defendant's petition outright. The State also argued that it properly used Cheryl's prior consistent statements to rehabilitate her testimony. Therefore, defendant was not prejudiced by appellate counsel's failure to raise the issue on direct appeal.

¶ 11 Postconviction counsel filed a response to the State's motion to dismiss maintaining his position that the State's use of Cheryl's prior consistent statements was improper because defendant did not allege that she had a motive to testify falsely or that her testimony was of recent fabrication. Counsel further argued that although the State used Cheryl's prior consistent statements to rehabilitate her, it made no effort to explain the inconsistencies in her testimony.

¶ 12 At a hearing on its motion to dismiss, the State argued that all of the issues raised in defendant's *pro se* petition could have been raised on direct appeal, and thus, were forfeited. The State then addressed the issue raised in the supplemental petition at greater length, arguing that it properly used Cheryl's prior consistent statements to rehabilitate her testimony.

¶ 13 Postconviction counsel argued that the State's case against defendant was completely circumstantial, and that Cheryl, who was using drugs at the time of the offense, was the only witness who provided direct evidence of defendant's involvement in the crime. Counsel argued that if Cheryl's testimony was not believable, then neither was the State's case. Counsel maintained that the State used Cheryl's prior consistent statements to improperly bolster her testimony. Counsel did not address the allegations raised in defendant's *pro se* petition.

¶ 14 In rebuttal, the State asserted that counsel's argument raised a reasonable doubt issue that should have been raised on direct appeal, and was not proper in a postconviction proceeding.

¶ 15 The circuit court found that the allegation raised in the supplemental petition could have been raised on direct appeal, and because it was not, it was forfeited. The court further found that trial counsel had implied recent fabrication by Cheryl during cross-examination, and therefore, the State's use of her prior consistent statements on redirect examination was proper. Consequently, the issue was without merit, and appellate counsel was not ineffective for failing to raise it on direct appeal. The court further found that the allegations in defendant's *pro se* petition were previously raised and rejected during trial, in defendant's motion for a new trial, and on direct appeal, and were therefore barred by *res judicata*. Accordingly, the circuit court granted the State's motion and dismissed defendant's postconviction petition.

¶ 16 On appeal, defendant contends that his postconviction counsel failed to provide reasonable assistance because he did not amend defendant's *pro se* petition to add an allegation of ineffective assistance of appellate counsel to prevent forfeiture of defendant's *pro se* claims. Defendant argues that although counsel filed a certificate pursuant to Rule 651(c), the record rebuts counsel's compliance with the rule because counsel failed to make a simple and obvious amendment to his petition. He further argues that counsel's failure to amend the petition constituted unreasonable assistance regardless of whether his *pro se* claims had merit, and that he was not required to demonstrate the merit of his claims. Defendant asserts that this court should reverse the dismissal of his petition and remand the case for further second-stage proceedings with new counsel.

¶ 17 The State responds that by filing the 651(c) certificate, postconviction counsel invoked the rebuttable presumption that he provided defendant with reasonable assistance. The State argues that defendant failed to meet his burden to rebut that presumption because he did not

assert or establish that any of his *pro se* claims had merit, which was necessary to show that counsel's failure to amend those claims was unreasonable. The State further argues that it is evident that counsel knew he would have to assert ineffective assistance of appellate counsel to overcome forfeiture as he did in the supplemental petition, but found defendant's *pro se* claims meritless and decided to do nothing more to support those claims. The State points out that defendant's *pro se* allegations were not raised on direct appeal, and thus, the trial court erred when it found the claims barred by *res judicata* rather than forfeiture.

¶ 18 We review the circuit court's dismissal of a postconviction petition without an evidentiary hearing *de novo*. *People v. Coleman*, 183 Ill. 2d 366, 388-89 (1998). The interpretation of a supreme court rule, including whether counsel fulfilled his duties under Rule 651(c), is also reviewed *de novo*. *People v. Suarez*, 224 Ill. 2d 37, 41-42 (2007). The reviewing court may affirm the circuit court's dismissal of a postconviction petition on any basis shown in the record. *People v. Davis*, 382 Ill. App. 3d 701, 706 (2008).

¶ 19 A postconviction proceeding is not a substitute for a direct appeal, but instead, is a collateral attack upon the conviction that allows only limited review of constitutional claims that could not be raised on direct appeal. *People v. Harris*, 224 Ill. 2d 115, 128 (2007). Defendant must demonstrate that he suffered a substantial deprivation of a constitutional right in the proceeding that produced his conviction or sentence in order to be entitled to postconviction relief. *People v. Pendleton*, 223 Ill. 2d 458, 471 (2006).

¶ 20 At second-stage postconviction proceedings, an indigent defendant is entitled to representation by appointed counsel. 725 ILCS 5/122-4 (West 2006); *People v. Lander*, 215 Ill.

2d 577, 583 (2005). Postconviction counsel is required to provide defendant with a “reasonable level of assistance.” *Lander*, 215 Ill. 2d at 583.

¶ 21 Pursuant to Supreme Court Rule 651(c), postconviction counsel has a duty to consult with defendant to ascertain his contentions of constitutional deprivation, examine the trial record, and, where necessary, amend the *pro se* petition to adequately present defendant’s contentions. *Pendleton*, 223 Ill. 2d at 472. Compliance with these duties may be shown by a certificate filed by postconviction counsel. Rule 651(c); *Lander*, 215 Ill. 2d at 584. Counsel’s substantial compliance with Rule 651(c) is sufficient. *People v. Profit*, 2012 IL App (1st) 101307, ¶ 18. A Rule 651(c) certificate creates a rebuttable presumption that postconviction counsel rendered reasonable assistance. *Profit*, 2012 IL App (1st) 101307 at ¶ 19.

¶ 22 Here, postconviction counsel filed a Rule 651(c) certificate stating that he consulted with defendant by mail and in person, that he read the report of proceedings from the trial and sentencing, that he attempted to interview witnesses to properly address defendant’s claims, and that he submitted a supplemental petition that augmented the allegations raised by defendant in his *pro se* petition. Accordingly, the presumption exists that counsel provided defendant with the reasonable level of assistance required by the rule. The burden, therefore, is on defendant to rebut this presumption by demonstrating that postconviction counsel failed to substantially comply with the duties required by Rule 651(c). *Profit*, 2012 IL App (1st) 101307 at ¶ 19.

¶ 23 In this case, defendant has failed to meet his burden. Defendant has not asserted that there is any merit in any of his *pro se* allegations, which he merely repeated verbatim from his motion for a new trial. Instead, he argues that he was not required to demonstrate the merit of those claims because the question of whether or not they have merit is irrelevant.

¶ 24 Defendant relies on our supreme court’s holding in *Suarez*, where the court found that postconviction counsel failed to comply with Rule 651(c) because he did not file the required certificate, and the record did not show that he had consulted with the defendant. *Suarez*, 224 Ill. 2d at 40, 44. Under these circumstances, the court held that remand was required regardless of whether the claims raised in the defendant’s petition had merit, and that counsel’s failure to comply with Rule 651(c) could not be excused on the basis of harmless error. *Id.* at 47, 52.

¶ 25 This same argument, relying on *Suarez*, has been previously rejected by this court. See *Profit*, 2012 IL App (1st) 101307, ¶¶ 21-23. In *Profit*, we held that, contrary to the defendant’s argument, “the question of whether the *pro se* allegations had merit is crucial to determining whether counsel acted unreasonably by not filing an amended petition.” *Id.* ¶ 23. We further explained that compliance with the third duty under Rule 651(c) does not require postconviction counsel to advance frivolous or spurious claims on behalf of the defendant. *Id.* (citing *People v. Greer*, 212 Ill. 2d 192, 205 (2004)). Moreover, if amending a *pro se* postconviction petition would do nothing more than further a frivolous or patently nonmeritorious claim, then it is not a “necessary” amendment within the meaning of Rule 651(c). *Id.*

¶ 26 Here, defendant has not demonstrated, or even asserted, that there is merit in any of his *pro se* claims. Consequently, he has not shown that postconviction counsel acted unreasonably when he did not amend the *pro se* petition to include a claim of ineffective assistance of appellate counsel to protect those claims from forfeiture. The record shows that defendant’s claims, which he repeated verbatim from his motion for a new trial, were previously considered and rejected by the trial court when it denied his posttrial motion. The record further shows that postconviction counsel spent five years investigating defendant’s claims and drafting the



supplemental petition. Counsel then filed the supplemental petition, along with his certificate of compliance with Rule 651(c). Therefore, in this case, there was a rebuttable presumption that postconviction counsel provided reasonable assistance. Because defendant did not demonstrate that there was merit in any of his claims, he failed to meet his burden to rebut that presumption. *Profit*, 2012 IL App (1st) 101307 at ¶ 19.

¶ 27 Based on our review of the record, we conclude that defendant has not rebutted the presumption that postconviction counsel substantially complied with the duties required in Rule 651(c) and provided the reasonable assistance contemplated by the Act. *Profit*, 2012 IL App (1st) 101307 at ¶ 19.

¶ 28 For these reasons, we affirm the judgment of the circuit court of Cook County dismissing defendant's postconviction petition following second-stage proceedings.

¶ 29 Affirmed.