2014 IL App (1st) 121995-U

THIRD DIVISION
August 27, 2014

No. 1-12-1995

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. 94 CR 23376
	)	
MICHAEL MASON,	)	Honorable
	)	Matthew E. Coghlan,
Defendant-Appellant.	)	Judge Presiding.

JUSTICE MASON delivered the judgment of the court.
Presiding Justice Hyman specially concurred.
Justice Pucinski concured in the judgment.

O R D E R

¶ 1 *Held*: Post-conviction counsel provided unreasonable assistance by not filing a supplemental petition or satisfying Rule 651(c) for nearly seven years, so that defendant's waiver of post-conviction counsel due to the lack of progress by counsel was not voluntary.

¶ 2 Following a jury trial, defendant Michael Mason (no relation to the author) was convicted of first degree murder and aggravated battery and sentenced to concurrent prison terms of 60 and 5 years. We affirmed on direct appeal. *People v. Mason*, No. 1-96-3999 (1997) (unpublished

order under Supreme Court Rule 23). Mason's 2000 *pro se* post-conviction petition was summarily dismissed, but we reversed and remanded for further proceedings finding that Mason stated the gist of a constitutional claim. *People v. Mason*, No. 1-00-4180 (2003) (unpublished order under Supreme Court Rule 23). The disposition of this petition on remand took more than eight years; for the majority of that period, counsel appointed to represent Mason did little to advance the petition. Mason now appeals from a May 2011 order dismissing his petition as supplemented *pro se*. He contends that appointed postconviction counsel rendered unreasonable assistance and that his motion for new counsel was denied so that he was compelled to proceed *pro se* to raise his claims. We agree and vacate the dismissal of Mason's petition.

¶ 3 Mason was charged with the first degree murder of Donald Brown and the attempted first degree murder and aggravated battery of Leonard Quails (or Qualls) on September 3, 1994. The evidence at trial showed that Mason had a fight with his girlfriend Unique Scott and her brother Antonio Tillis, followed by a brief confrontation with Lester Jeter. As Mason stood outside Scott's home yelling, the victims (both very intoxicated) confronted him. Their argument escalated into a fistfight, and when the victims fell to the ground, Mason kicked them repeatedly in the head. Jeter, Tillis, and Scott saw Mason kicking or "stomping" the victims, and Mason admitted that he kicked both victims in the head. Mason denied intending to kill the victims and testified that he feared for his life during the fight. Brown died of severe skull and brain injuries, and Quails suffered a severe head injury causing a cognitive deficit requiring rehabilitation and nursing-home care.

¶ 4 A jury convicted Mason of the first degree murder of Brown and the aggravated battery of Quails. The court sentenced him to concurrent prison terms of 60 and 5 years respectively, and Mason's *pro se* post-sentencing motion was denied.

¶ 5 On direct appeal, Mason contended only that his 60-year prison sentence for murder was excessive. We found that the trial court did not abuse its discretion because its sentence "was appropriate given the senseless nature of [Mason's] brutal and unprovoked attack on two unarmed, highly intoxicated men." *People v. Mason*, No. 1-96-3999 (1997) (unpublished order under Supreme Court Rule 23).

¶ 6 Mason filed a *pro se* post-conviction petition in September 2000, alleging ineffective assistance of trial counsel for failing to (i) present two witnesses to his intoxication on the day in question, (ii) investigate or present the issue of his mental health, (iii) seek a behavioral clinical examination, (iv) cross-examine treating paramedic Pamela Guidizi, (v) allow him to testify regarding his state of mind "prior and during the incident with the victims," (vi) seek a continuance "to properly prepare for sentencing to present meaningful argument," or (vii) file a post-sentencing motion. Mason also claimed that the State made prejudicial opening and closing arguments, the evidence was insufficient to convict as shown by the jury's inconsistent verdicts, the court erroneously gave a jury instruction on circumstantial evidence, dealt improperly with notes from the deliberating jury, and failed to advise him of his three-year term of mandatory supervisory release, and that appellate counsel was ineffective for not raising these issues on direct appeal. Attached to the petition were Mason's affidavits. He averred that his attack on Brown and Quails was not a premeditated act, but a "sudden act of passion" and "release of hostility" fueled by alcohol and "blind rage" from his argument with Scott and Tillis. He also

averred that he informed trial counsel of his mental health issues and that counsel refused to raise the issue of his intoxication because she did not want Mason's defense to revolve around intoxication. No other person's affidavit was attached to the petition.

¶ 7 In October 2000, the circuit court summarily dismissed the petition. However, on appeal from the summary dismissal, we found that Mason stated an unforfeited and arguably meritorious claim that trial counsel failed to investigate and present mental health evidence. We therefore remanded for further post-conviction proceedings. *People v. Mason*, No. 1-00-4180 (2003) (unpublished order under Supreme Court Rule 23).

¶ 8 After remand, on January 9, 2004, the public defender of Cook County was appointed as post-conviction counsel. The case was continued various times over the next 16 months. On May 17, 2005, Assistant Public Defender (APD) Brenton Williams told the court that he was completing his research and "in the process of obtaining three more affidavits" from Mason, his stepfather, and an unnamed man in jail that APD Williams had yet to interview "to ascertain what he is going to say." The case was continued a number of times over the next year.

¶ 9 On May 9, 2006, APD Julie Hull told the court that "this was Mr. Hall's case. He left the office." (No APD Hall had previously appeared on the case.) The case was continued several more times until November 14, 2006, when an APD told the court that the case was still assigned to APD Hull but she could not attend court due to her mother's illness and that it was one of APD Hull's "newest assignments" and thus "down at the bottom of her list." When the court asked how this was a new assignment, the APD replied that APD Hull was "responsible for it as of October of '06." The court expressed concern about the length of time the petition had been pending and set a status for November 30.

¶ 10 On November 30, 2006, nearly three years after remand, APD Hull informed the court that she had been assigned to Mason's case since January 2006 with "12 other cases in front of him" on "my list," that the previously-assigned APD was a new attorney and failed to order the direct appeal briefs to address the claims of ineffective appellate assistance or Social Security or school records to address the mental health claims, and that she had ordered the briefs and was "looking at trying to get" these records. The court told APD Hull that "it's not your fault that it got to this point" because her assignments were "out of your control" but "this needs to jump up your list somehow." The court also instructed APD Hull's supervisor, APD Harold Winston, also present, to "do something to get this on a priority schedule." The matter was continued to February 2007.

¶ 11 On February 27, 2007, APD Hull told the court that Mason's case is "13 on my list" and that she was still "trying to get records" on the mental health claim but had not "received everything yet," and she was uncertain that the records could be located after more than 14 years. When the court asked APD Hull if this was the case where her supervisor appeared with her because "the case *** sat for three years that nobody worked on at all," she replied that it was a different case. The court instructed APD Hull to prepare a subpoena for the records, submit it for the court's signature by the following day and expedite its service so the parties could ascertain whether records exist. Noting that the continuance would be for the return of the subpoenas and not for filing of pleadings, the court continued the case to April 3.

¶ 12 On April 3, 2007, APD Hull told the court that neither the school nor Social Security had yet responded to the subpoenas, that Mason had "moved up to n[umber] 12 on my list," and that she could decide to file a Rule 651(c) certification or supplemental petition with a three-month

continuance to July 2007. The court granted the request "with your assurance that it's going to be moving and we will figure out what we are doing on the next court date." The case was again continued in July 2007 to September 2007.

¶ 13 On September 12, 2007, APD Hull told the court that "I haven't received all the materials" subpoenaed and sought a three-month continuance "to try and receive the rest of the mental health records." She admitted that "I am a little bit behind on trying to contact the facilities themselves" to expedite production of the records and that she now had 14 other postconviction petitions ahead of Mason's. The court continued the case until October 23.

¶ 14 On October 23, 2007, APD Winston told the court that APD Hull was reassigned to another court and Mason's case was "in the process" of reassignment. The court continued the case to December 13. On that day, an APD told the court that Mason's case was assigned to APD Elyse Miller and sought a continuance to March 2008 for her "to get up to speed." APD Miller failed to attend the next two status hearings.

¶ 15 On March 25, 2008, APD Miller told the court that she was assigned Mason's case in mid-December, had not yet reviewed the transcripts and "ha[s] quite a few cases ahead of it" but had spoken to Mason by telephone the previous week. On APD Miller's request, the case was continued to June 24 with the court's proviso that it was "for defense filings."

¶ 16 But on June 24, APD Miller still had not prepared a supplement to Mason's petition and the case was continued to September 10. By September, Miller had not completed her review of the record and informed the court that Mason's was one of the most recent postconviction petitions assigned to her.

¶ 17 Before the next status scheduled for November 2008, Mason filed *pro se* motions seeking appointment of counsel other than the Public Defender and to proceed *pro se* with standby counsel. He noted that he had been assigned three APDs following remand, that the Public Defender "has made no attempts towards amending his" *pro se* petition, and that he was raising claims of ineffective assistance of trial counsel, *i.e.*, the Public Defender. Mason claimed he felt compelled to proceed *pro se*" and that although he was familiar with his case, he was requesting appointment of standby counsel to assist in obtaining records and to ensure his compliance with rules of procedure and evidence.

¶ 18 At a hearing on Mason's motions held on December 8, 2008, APD Miller informed Mason that (i) six cases assigned to her were ahead of his, (ii) she would devote her full attention to Mason's case as soon as she filed supplemental petitions in those cases and (iii) proceeding *pro se* was not wise. Miller disclosed that the records subpoenas issued nearly two years earlier in February 2007 had for some reason not been served and requested that the subpoenas be reissued.

¶ 19 The court denied the motion for counsel other than the public defender, finding that Mason had not shown a conflict of interest, but took the APD to task for the lack of progress and noted that it would reconsider Mason's motion if there was no progress. The court told Mason that standby counsel would not be appointed if he chose to proceed *pro se*. The court re-issued the subpoenas and continued the case to January 14.

¶ 20 On January 14, 2009, now more than five years after remand, APD Miller apprised the court of her efforts on the subpoenas. The school replied that it destroys special education and mental health records after five years except final transcripts after graduation, but Mason did not

graduate. Social Security required a release of records signed by Mason, which APD Miller forwarded to him on January 5. The case was continued to February 4 for return of the release.

¶ 21 On February 4, 2009, APD Miller told the court that Mason had not received the release form, and that he still wanted to proceed *pro se*. APD Miller further reported that there were now only three cases ahead of Mason's. Mason told the court, "I'll be willing to wait and see how long it takes counsel to start working on my case," and withdrew his motion to proceed *pro se*. APD Miller did not have a copy of the release form with her, but indicated she would mail it to Mason. The case was continued to April 6.

¶ 22 On April 6, 2009, APD Miller told the court that Social Security reported on March 24 having no record of Mason receiving benefits, including disability benefits. She met with Mason, who wanted to keep the Public Defender rather than acting *pro se* and had further issues to discuss with APD Miller before a supplemental petition could be filed. APD Miller reported that she would speak with Mason by telephone "next week" and sought a continuance to early June. The court continued the case to June 16.

¶ 23 On June 16, APD Miller told the court that Mason had sent her a 32-page document with "new allegations" that she had to review, research, and evaluate and thus sought and received an eight-week continuance. On August 5, 2009, APD Miller told the court that she had requested and received "the trial file" to evaluate Mason's new allegations. The court granted a continuance to September 23.

¶ 24 On September 23, 2009, APD Bruce Landrum told the court that he was assigned Mason's case the preceding day as APD Miller had been transferred to another courthouse. The court suggested that APD Landrum contact Mason soon, and he said that he would do so "next

week." The court granted a continuance to December 3. Following December 3, 2009, APD Landrum received three more continuances, the last to September 9, 2010.

¶ 25 In April 2010, Mason filed another motion to proceed *pro se*. Noting that his case had been assigned to four APDs, he argued that "his cause is constantly being shuffled around with the Public Defender's Office to cleverly prolong the amendment of his petition." He alleged that he had requested from APD Landrum several documents concerning issues he wanted to raise in his amended petition.

¶ 26 On September 9, 2010, APD Landrum told the court that he was "currently investigating" and was "on the scientific statements" and requested another three-month continuance. The court noted Mason's new motion to proceed *pro se* and continued the case to October 20 with "Public Defenders to *writ* the defendant" to court. Mason was not present for court on October 20, and when the court asked APD Landrum if he *writted* Mason, he replied that he consulted with the State's Attorney "but something must have happened." The case was continued to December 2 and the court directed both parties to *writ* in Mason.

¶ 27 In October 2010, Mason filed a *pro se* supplemental post-conviction petition. He claimed that his petition was untimely filed but not due to his culpable negligence because he had employed post-conviction counsel who was not licensed to practice law and never filed a petition. Substantively, he claimed that he was absent for discussions between the court, State, and defense counsel during jury deliberations, and that the sheriff had improper "*ex parte* communications" with the jury during deliberations. Mason alleged that trial counsel should have sought jury instructions on manslaughter and failed to object to his absence during critical stages of the proceedings. He alleged that appellate counsel was ineffective for not raising these

issues on direct appeal. The supplemental petition was supported by Mason's affidavit and by a November 2000 letter from the Attorney Registration and Disciplinary Commission to Mason stating that the lawyer Mason claimed to have retained was not licensed to practice law in Illinois.

¶ 28 On December 2, 2010, the court heard Mason's motion after he confirmed that he still wanted to act *pro se* because "nothing [has] been done with my case" and no progress was made since his last personal appearance in court. APD Landrum told the court that (after 15 months) Mason's case "had just reached the point [where] I can start working" when Mason filed his motion to proceed *pro se* and "of course, I put it on the back burner" upon learning of the motion. Landrum opined that he could "hopefully" file a Rule 651(c) certificate with another three-month continuance.

¶ 29 The court ascertained from Mason that he attended school only through the 10th grade and was attending GED courses in prison. Mason claimed that every time he called APD Landrum he was not in the office and that he did not respond to Mason's letters. The court and Mason both noted that Mason's case was repeatedly reassigned to different APDs. When the court suggested that Mason should have the benefit of counsel on his first post-conviction petition, as any issue not raised would be forfeited or waived on successive petitions, Mason said "I understand. Not the Cook County Public Defender Office." Mason represented to the court that hiring counsel "can be worked on and arranged."

¶ 30 After admonishing Mason that he would be held to the same standard as a defendant represented by counsel, the court granted his motion to proceed *pro se* and vacated the

appointment of the Public Defender. The case was continued to December 16 for APD Landrum to tender the case file to Mason.

¶ 31 On December 16, 2010, the file was tendered and Mason told the court "it appears the documents are in there that I was looking for." Responding to the trial judge's question, Mason stated that two months would not be sufficient for him to file a supplemental petition. The court continued the case for two months, to February 23, 2011, but stated that it would consider another continuance at that time. The court issued an order that Mason be allowed to use the prison law library two days per week. The court later granted a further continuance to April 6.

¶ 32 On April 6, 2011, Mason filed his supplemental petition in open court and stated that, having earlier filed a supplemental petition, the instant supplemental petition contained all claims he wanted to raise. In his supplemental petition, Mason expounded upon the earlier-raised claims and added claims that trial counsel failed to submit victim Brown's criminal history as evidence of his propensity towards violence, to impeach Tillis, and to seek a plea agreement. The supplemental petition was supported by Mason's affidavit, Brown's arrest record, and the affidavit of Mason's sister regarding plea-agreement discussions.

¶ 33 On May 25, 2011, the State sought "a really long date" to file a motion to dismiss as "about 30 issues *** are being alleged." Mason did not object and the case was continued to August 1.

¶ 34 In its motion to dismiss filed on August 1, the State argued that Mason's petition was untimely (being due in September 1999 but not filed until September 2000) and that Mason was not relieved of the duty to timely file his petition by the fraud of purported counsel. As to counsel's ineffectiveness, the State pointed out that defense counsel argued and obtained jury

instructions on second degree murder, Brown's arrest history was inadmissible, the impeachment of Tillis with his grand-jury testimony and cross-examination of Guidizi were matters of trial strategy, and that counsel negotiated a plea-bargain of 28 years' imprisonment but Mason rejected it. As to the jury deliberation issues, the State argued that Mason's absence from jury-note conferences was harmless error and that the sheriff merely relayed the court's instruction or response to the jury. The State also argued that Mason's claims were forfeited by not raising them on direct appeal.

¶ 35 Mason filed his response to the State's motion on December 8. In his response, Mason reiterated his claims, additionally arguing that "there are reasons to believe" the sheriff communicated more than the court's instruction to the jury, that trial counsel should have sought involuntary manslaughter instructions based on Mason's intoxication, and that he did not forfeit his claims by not raising them on direct appeal because he was claiming ineffective assistance of appellate counsel.

¶ 36 The court held a hearing on the State's motion to dismiss on February 8, 2012. After taking the matter under advisement, the court granted the motion to dismiss on May 30, 2012. Rejecting the State's timeliness argument, the court found that Mason had shown lack of culpable negligence. However, the court found that (i) Mason failed to allege prejudice from his absence from the jury-note conference or from the sheriff relaying the court's response to the jury; (ii) he was not entitled to an involuntary manslaughter instruction because he intentionally kicked or "stomped" the victims rather than doing so recklessly as required for involuntary manslaughter; (iii) defense counsel could not have introduced Brown's arrest record, and likely would not have wanted to introduce Tillis's grand-jury testimony describing Mason's "stomping" of the victims;

and (iv) Guidizi's testimony corroborated rather than contradicted Tillis's testimony as Mason claimed. Finally, since the court found none of the issues raised by Mason meritorious, it likewise concluded that appellate counsel was not ineffective for not raising them. This appeal timely followed.

¶ 37 On appeal, Mason contends that the Public Defender did not provide reasonable postconviction assistance when his case was passed from one APD to another with little progress for several years, and that his motion for new counsel was denied, so that he was compelled to proceed *pro se* to raise his claims. Mason therefore seeks remand for second-stage proceedings with reasonable assistance of counsel.

¶ 38 The Post-Conviction Hearing Act (Act)(725 ILCS 5/122-4 (West 2012)) provides in relevant part for the provision of transcripts and appointment of counsel for indigent petitioner-defendants. Illinois Supreme Court Rule 651(c) concerns the same, requiring that the record on appeal in a post-conviction case:

> "shall contain a showing, which may be made by the certificate of petitioner's attorney, that the attorney has consulted with petitioner by phone, mail, electronic means or in person to ascertain his or her contentions of deprivation of constitutional rights, has examined the record of the proceedings at the trial, and has made any amendments to the petitions filed *pro se* that are necessary for an adequate presentation of petitioner's contentions." Ill. S. Ct. R. 651(c) (eff. Feb. 6, 2013)

¶ 39 The right to counsel in post-conviction proceedings is not constitutional but statutory under the Act, and thus a defendant is entitled to only a reasonable level of assistance. *People v. Suarez*, 224 Ill. 2d 37, 42 (2007); *People v. Kelly*, 2012 IL App (1st) 101521, ¶ 28. The purpose of the duties imposed by Rule 651(c) is to ensure that a defendant's complaints are adequately presented by ascertaining the basis of those complaints, shaping them into appropriate legal form, and presenting them to the court. *Suarez*, 224 Ill. 2d at 46. The Rule is not a mere formality; it is designed to ensure that postconviction petitioners receive proper representation in fashioning constitutional claims. *Id.* at ¶ 47.

¶ 40 When postconviction counsel fails to fulfill these duties, the case must be remanded for second-stage proceedings regardless of whether the claims raised in the *pro se* petition have any merit. *Suarez*, 224 Ill. 2d at 47. We do not conduct a harmless-error analysis of a failure to adhere to Rule 651(c) because "where postconviction counsel does not adequately complete the duties mandated by the rule, the limited right to counsel conferred by the Act cannot be fully realized." *Suarez*, 224 Ill. 2d at 51.

¶ 41 In *Kelly*, a defendant filed a *pro se* petition in 1998 and counsel was appointed in 1999. Counsel filed a partial supplemental petition in 2001 raising an untimely *Apprendi* claim and was given leave to withdraw in 2003, whereupon the defendant hired private counsel. *Kelly*, 2012 IL App (1st) 101521, ¶¶ 6-10. In 2007, the defendant moved for appointment of new counsel in 2007, on the basis that private counsel had not visited him or filed any supplemental or amended petition in four years, and also filed a *pro se* supplemental petition. *Id.*, ¶¶ 11-12. In 2008, private counsel acknowledged he had not visited defendant nor filed any motion or amended petition, but asserted that visiting the defendant was unnecessary and that the delay resulted from

the difficulty of the defendant's issues. In 2008, private counsel adopted the *pro se* supplemental pleadings, and in 2010 filed a Rule 651(c) certificate. *Id*., ¶¶ 13-14, 18. The petition was dismissed on the State's motion in 2010, at a hearing where private counsel expressed confusion over the procedural posture of the petition and then argued that the first-stage frivolousness standard applied at the second stage. *Id*., ¶ 19. Under these circumstances, we agreed with Kelly's contention that post-conviction counsel had not provided reasonable assistance, including that nearly 12 years elapsed between the *pro se* petition in 1998 and the dismissal of the amended petition in 2010, during which one counsel filed a single document and another counsel filed nothing for nearly five years. *Id*., ¶¶ 35, 40. We therefore remanded the case for further second-stage proceedings. *Id*., ¶ 48.

¶ 42 Here, from the beginning of 2004 when the Public Defender was appointed through the end of 2010 when Mason's motion to proceed *pro se* was granted, a span of nearly seven years, the APDs assigned to Mason's case did not fulfill the duties of Rule 651(c). None filed an amended or supplemental petition, none filed a Rule 651(c) certificate, and none stated on the record the key element of Rule 651(c): that he or she concluded that no amendment or supplement was needed to adequately present Mason's claims. While the APDs described some efforts to ascertain the basis of Mason's complaints and shape them into appropriate legal form, counsel never presented them to the court. In sum, we agree with Mason that post-conviction counsel did not render reasonable assistance during the period before he elected to proceed *pro se*.

¶ 43 We also agree with Mason that he did not voluntarily waive post-conviction counsel because he effectively "had no reasonable choice but to proceed *pro se* in order to obtain a ruling

on his claims" in light of the lack of reasonable assistance from the APD's assigned to his case. Mason expressly based his decision to proceed *pro se* on the lack of progress by counsel and the record objectively bears out that lack of progress over an egregiously long period. While we have no doubt that the Office of the Public Defender was understaffed and overworked during the period of time Mason's petition was pending, those facts cannot offset the lack of reasonable assistance that office provided to Mason.

¶ 44 Finally, because Mason did not have the reasonable assistance of counsel in his second-stage proceedings, *Suarez* dictates that we must remand, without conducting a harmless-error analysis of Mason's *pro se* claims, for second-stage proceedings where Mason shall have the reasonable assistance of counsel. We rely on the circuit court, and any counsel it may appoint to represent Mason, to ensure that the delays and lack of progress described above will not be repeated on remand.

¶ 45 Accordingly, the judgment of the circuit court is vacated and this cause is remanded for further proceedings consistent with this order.

¶ 46 Vacated and remanded.

¶ 47 PRESIDING JUSTICE HYMAN, specially concurring.

¶ 48 Regardless of the causes for the delay or of the eventual outcome of the post-conviction proceedings, the entire legal system failed Mason. Few cases present a more repugnant tale of delay and procrastination than this one. Indeed, the State Appellate Defender characterized the delay as "cruel." An over 10 year lull after our remand for postconviction proceedings. Four different assistant public defenders placed this assignment at the bottom of their "to do" list during seven of those years. Fifteen months of idleness by his final counsel. The passage of such

an inordinate and disturbing amount of time could not but deprive Mason of his right to the reasonable assistance of counsel.

¶ 49 While delays are common and often necessary, the unreasonable delay that Mason endured cannot be undone or minimized or interpreted away. And, unreasonable delay hardly describes it. Particularly in post-conviction proceedings, years of delay might otherwise confine an innocent person in prison, an outcome abhorrent to justice in a democratic society. For this reason, I write to take issue with the State that there is "no provision for promptness in post-conviction representation."

¶ 50 In so asserting, the State ignores the historic reality that considers delay a form of denial of justice. As the Magna Carta, which celebrates its 800th anniversary next year, decreed, "To no one will we…delay right or justice." From that pledge to our own constitutional guaranties of due process and equal protection, the canker of delay has been a plague that can never be erased, only tamed. The Illinois criminal statutes are crammed full with deadlines and priorities, timeframes and time-traps, all meant to reasonably expedite the proceedings, not slow them down. Like swift justice, terribly slow justice is not justice, but itself an abuse of the legal system.

¶ 51 The duty of promptness is cast in the Illinois Supreme Court Rules of Professional Conduct. Ill. S. Ct. R. Prof. Conduct, R. 1, 3. Unreasonable delays may cause a client to feel anxious as well as frustrated about his or her case and usually dissatisfied with counsel's representation, both of which occurred here. It also dangerously undermines trust in the legal system. Indeed, so repugnant is lengthy delay that in a state collateral proceeding it can comprise

the basis for excusing exhaustion of state remedies for a federal *habeas corpus* petitioner. See, e.g. *Jackson v. Duckworth*, 112 F.3d 878, 881 (7th Cir. 1997).

¶ 52 The judges, prosecutors, public defenders, and private criminal defense attorneys work admirably under difficult circumstances dealing with a heavy volume of cases. Fortunately, few defendants get lost in the swirl of the legal procession taking place day-in and day-out in our overburdened criminal courts. That Mason did, should be recognized for what it is—a rare exception, and not a justification for denying the existence of the inherent right for promptness in post-conviction proceedings.