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2013 IL App (3d) 120186-U

Order filed August 12, 2013

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IN THE  
APPELLATE COURT OF ILLINOIS  
THIRD DISTRICT

A.D., 2013

THE PEOPLE OF THE STATE OF ILLINOIS,	) Appeal from the Circuit Court
	) of the 14th Judicial Circuit,
Plaintiff-Appellee,	) Henry County, Illinois,
	)
v.	) Appeal No. 3-12-0186
	) Circuit No. 08-CF-129
	)
MICHAEL E. DeBATES,	) Honorable
	) Charles H. Stengel,
Defendant-Appellant.	) Judge, Presiding.

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JUSTICE HOLDRIDGE delivered the judgment of the court.  
Justices O'Brien and Schmidt concurred in the judgment.

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**ORDER**

¶ 1 *Held:* Postconviction counsel rendered reasonable assistance despite his failure to file a Rule 651(c) certificate.

¶ 2 Defendant, Michael E. DeBates, pled guilty to five counts of child pornography (720 ILCS 5/11-20.1(a)(1)(vii) (West 2006)) and was sentenced to four concurrent 15-year terms of imprisonment and one consecutive term of 9 years. Thereafter, defendant filed a *pro se* postconviction petition with the circuit court. The petition proceeded to a second stage, and

counsel was appointed to represent defendant. After appointed counsel filed an amended petition, the State filed a motion to dismiss. The circuit court granted the dismissal motion. Defendant appeals, arguing that postconviction counsel's performance was not reasonable where counsel did not certify that he read the entire record of proceedings. We affirm.

¶ 3

### FACTS

¶ 4 Defendant was charged with 5 counts of unlawful video recording (720 ILCS 5/26-4(a-5), (d)(4) (West 2006)), 12 counts of child pornography (720 ILCS 5/11-20.1(a)(1)(vii), (2) (West 2006)), and 2 counts of predatory criminal sexual assault of a child (720 ILCS 5/12-14.1(a)(1) (West 2006)). After the charges were filed, defendant filed a motion to determine his fitness to stand trial. After a hearing on the motion, the trial court concluded that defendant was unfit and ordered that he be evaluated by the Department of Human Services (DHS). Following the evaluation, DHS issued a report that indicated that defendant was fit to stand trial with medication.

¶ 5 Thereafter, a new fitness hearing was held. This time, the court concluded that defendant was fit to stand trial. The court also directed the jail not to change defendant's medication. Despite this directive, defendant's medication was the subject of an inquiry during a pretrial conference. During that conference, defendant indicated that his medication had been changed. The court held a subsequent fitness hearing and determined, once again, that defendant was not fit to stand trial. The court sent defendant back to DHS. Following treatment, DHS concluded that defendant was again fit for trial, and the court held another fitness hearing where it concluded defendant was restored to fitness.

¶ 6 After being restored, defendant pled guilty to five counts of child pornography. Before accepting defendant's plea, the court explained the agreement and the sentence to defendant. Defendant stated that he understood the agreement and confirmed that he had discussed the consequences of his plea and his rights with counsel. Defendant's attorney stated that there was no reason to doubt defendant's fitness. The court sentenced defendant, pursuant to the plea agreement, to four concurrent 15-year terms of imprisonment and one consecutive term of 9 years.

¶ 7 While incarcerated for the offenses, defendant filed a *pro se* postconviction petition, alleging that: (1) trial counsel was ineffective for not properly advising him of the law; and (2) he was suffering from a confused and unstable state of mind when he accepted his guilty plea. The trial court found that the petition stated the gist of a constitutional claim and appointed counsel to represent defendant. After appointing counsel, but before counsel filed an amended petition, the transcript of the guilty plea hearing was added to the trial court file. Thereafter, counsel filed an amended petition and a Rule 604(d) certificate stating that he had: (1) consulted with defendant to ascertain his contentions; (2) examined the trial court file; and (3) reviewed defendant's *pro se* motion and made the necessary amendments. After receiving the amended petition, the State filed a motion to dismiss. The trial court granted the motion after finding that defendant's allegations were nonfactual and not specific enough to require an evidentiary hearing. Defendant appeals.

¶ 8 ANALYSIS

¶ 9 Defendant argues that his postconviction counsel did not render reasonable assistance because he failed to certify that he read the entire record of proceedings. Supreme Court Rule

651(c) requires that the record in a postconviction proceeding contain a showing that counsel has: (1) consulted with the petitioner to ascertain his contentions of deprivation of constitutional rights; (2) examined the record of the proceedings at the trial; and (3) made any necessary amendments to the *pro se* petition. Ill. S. Ct. R. 651(c) (eff. Dec. 1, 1984). While the rule does state that the showing may be made by certificate, the failure to file a certificate will be excused if the record clearly demonstrates that counsel complied with the rule. *People v. Johnson*, 154 Ill. 2d 227 (1993). We review whether counsel complied with the requirements of Rule 651(c) *de novo*. *People v. Suarez*, 224 Ill. 2d 37 (2007).

¶ 10 In this case, postconviction counsel filed a Rule 604(d) certificate instead of a Rule 651(c) certificate. Pursuant to that certificate, however, counsel did make a showing that he: (1) consulted with defendant to ascertain his contentions; (2) examined the trial court file; and (3) reviewed defendant's *pro se* motion and made the necessary amendments.

¶ 11 Defendant claims that because Rule 651(c) requires counsel to examine the record of proceedings, counsel's statement that he examined the trial court file was not sufficient. Defendant further argues that in order to adequately represent him on his claim that he was unfit to plead guilty, counsel was required to review the transcripts from the fitness hearings. Defendant is correct that those transcripts were not included in the trial court file. Importantly, however, the record does indicate that the transcript from the guilty plea hearing was added to the file prior to counsel filing the Rule 604(d) certificate.

¶ 12 In order to render reasonable assistance under Rule 651(c), postconviction counsel is only required to examine as much of the transcript of proceedings as is necessary to adequately present and support the constitutional claims raised by the petitioner. *People v. Davis*, 156 Ill. 2d

149 (1993). Here, defendant's *pro se* claim in question was that he was unfit to plead guilty. Because the claim relates to defendant's state of mind when he pled guilty, we conclude that a review of the transcript from the guilty plea hearing was all that was necessary to adequately present and support defendant's claim, and counsel was not required to review the transcripts from the fitness hearings. Therefore, we find that counsel's showing that he examined the trial court file, which included the guilty plea hearing transcript, was enough to satisfy the requirements of Rule 651(c).

¶ 13

#### CONCLUSION

¶ 14 The judgment of the circuit court of Henry County is affirmed.

¶ 15 Affirmed.