2014 IL App (4th) 130191-U

NO. 4-13-0191

FILED
July 25, 2014
Carla Bender
4th District Appellate
Court, IL

IN THE APPELLATE COURT

OF ILLINOIS

FOURTH DISTRICT

THE PEOPLE OF THE STATE OF ILLINOIS,	)	Appeal from
Plaintiff-Appellee,	)	Circuit Court of
v.	)	McLean County
ANDRE WOODS,	)	No. 07CF661
Defendant-Appellant.	)	
	)	Honorable
	)	Charles G. Reynard,
	)	Judge Presiding.

JUSTICE POPE delivered the judgment of the court.
Presiding Justice Appleton and Justice Harris concurred in the judgment.

ORDER

¶ 1 *Held*: We affirm, as postconviction counsel provided reasonable assistance.

¶ 2 In August 2008, a jury convicted defendant, Andre Woods, of three counts of aggravated robbery, one count of resisting a peace office, one count of obstruction of justice, and one count of aggravated battery. In February 2011, defendant filed a postconviction petition. Postconviction counsel filed a motion to withdraw, detailing his conclusion defendant's petition had no merit and his review of the record revealed no meritorious claims. The trial court granted the motion to withdraw, dismissing the petition.

¶ 3 On appeal, defendant argues postconviction counsel failed to provide reasonable assistance because counsel failed to obtain an affidavit from a possible alibi witness or an

affidavit from defendant describing the witness's testimony before moving to withdraw. The State argues defendant received reasonable assistance of counsel. We affirm.

¶ 4 I. BACKGROUND

¶ 5 A. Trial Court Proceedings

¶ 6 In July 2007, the State charged defendant with (1) four counts of armed robbery, a Class X felony (720 ILCS 5/18-2(a)(1), (b) (West 2006)); (2) four counts of aggravated robbery, a Class 1 felony (720 ILCS 5/18-5(a), (b) (West 2006)); (3) one count of resisting a peace office, a Class 4 felony (720 ILCS 5/31-1(a-7) (West 2006)); (4) one count of obstruction of justice, a Class 4 felony (720 ILCS 5/31-4(a), (d)(1) (West 2006)); and (5) one count of aggravated battery, a Class 3 felony (720 ILCS 5/12-4(b)(8), (e)(1) (West 2006)). In August 2008, a jury convicted defendant on every count, except one of the aggravated-robbery counts and one of the armed-robbery counts. The trial court then vacated defendant's three aggravated-robbery convictions, under the one-act, one-crime rule.

¶ 7 At trial, Logan Fields, a named victim in one armed-robbery count, which resulted in a conviction, testified on June 23, 2007, he, Brook McBurney, Lisa Olson, Jennifer Keil, and Brandy Johnson were walking toward a bar in downtown Bloomington when two men appeared in front of them. One man brandished a handgun and demanded Fields' wallet. When Fields did not immediately comply, the man hit him in the head with the handgun and took his wallet. Fields identified defendant as the man standing behind the man with the gun and stated he was wearing a brown jumpsuit with a white stripe down the side. Fields observed defendant and his accomplice take McBurney's, Olson's, and Johnson's purses, but they could not grab Keil's purse because she was lying on top of it. Both of the men then ran away. The police

arrived some minutes later, and Fields accompanied a police officer to a nearby parking lot, where he identified the defendant as one of his assailants.

¶ 8 McBurney, the named victim in the second armed-robbery count for which defendant was convicted, testified she was walking behind Fields when the defendant, whom she identified at trial, and his accomplice appeared and demanded her purse. Defendant then grabbed her purse while his accomplice held a gun. McBurney observed defendant's accomplice strike Fields in the head with the handgun and take his wallet. McBurney also went to the parking lot with a police officer, where she identified defendant as the man who took her purse.

¶ 9 Olson was the named victim in the count resulting in defendant's third armed-robbery conviction. Olson testified two men approached her and demanded her purse, which she gave to defendant. Olson also identified defendant at trial and stated he was wearing a brown jumpsuit on the night of the robbery.

¶ 10 Keil was the named victim in defendant's aggravated-battery conviction. Keil testified she was walking about a half block behind Fields, McBurney, and Olson when she turned a corner and saw her friends sitting on a sidewalk and two men walking toward herself and Johnson. Keil saw the men with the purses and yelled, " 'Those are my friend's [*sic*] purses.' " Defendant's accomplice told Keil, " 'Shut up, B ***' " and hit her with the handgun. Keil fell to the ground on top of her purse and the two men ran without taking her purse. Keil was bleeding from two cuts on her face and was unable to identify either of the individuals.

¶ 11 Samantha and Allen Joyce each testified they were parked across from the robbery and witnessed a group of people arguing. Samantha witnessed one man hit another man and saw a gun. She dialed 9-1-1 as two men "took off running." Samantha could not identify defendant by his face, but she identified him on the night of the robbery by the distinctive brown

jogging suit with a white stripe down the side that he was wearing. Allen corroborated his wife's testimony. He also identified the man detained by the police based on the pants he was wearing when he was arrested.

¶ 12 City of Bloomington police officer William Buchanan testified he was on patrol when he received an armed-robbery call, describing the suspects as two African-American males, one of whom was wearing a brown jumpsuit. Buchanan observed defendant four blocks east of the reported robbery, walking very quickly and wearing a brown jumpsuit. Buchanan sped up to catch defendant and defendant began running. Buchanan followed behind, but lost sight of defendant. Buchanan regained sight of defendant just as police officer Justin Shively and his police dog, Barko, were attempting to handcuff defendant. After a scuffle, defendant was handcuffed. Buchanan asked defendant his name, and defendant answered, "Maurice Thomas."

¶ 13 Officer Brown also testified defendant identified himself as "Maurice Thomas" in response to questioning. Officer Scott Mathewson testified he recovered a handgun in the area where the officers chased defendant, but the gun was, in fact, a BB gun, although it looked like a real handgun and had a similar weight. Mathewson testified he found no fingerprint evidence tying defendant to the gun and had the handgun tested for deoxyribonucleic acid (DNA) evidence, but he did not know the results of the test. Other testimony established the police found the stolen purses and wallets near the route on which police chased defendant.

¶ 14 After consulting with counsel, defendant exercised his constitutional right not to testify. The trial court admonished defendant he had a constitutional right to testify as well as a right not to testify and it was his choice whether to testify. Defendant presented no evidence.

The jury convicted defendant on all counts, except the armed-robbery and aggravated-robbery counts naming Keil as the victim.

¶ 15 At sentencing, defendant denied his guilt and stated he believed the jury convicted him because of his race. The trial court sentenced defendant to the following concurrent prison terms: (1) 60-year extended terms on each of the three armed-robbery convictions and (2) two 6-year extended terms on the obstruction-of-justice convictions. The trial court also sentenced defendant to a 10-year extended term on the aggravated-battery conviction, to run consecutively to the 60-year prison terms already imposed, for a total of 70 years' imprisonment.

¶ 16 B. Direct Appeal

¶ 17 On direct appeal, defendant argued the trial court abused its discretion in sentencing him to 60-year extended terms on the armed-robbery convictions and the court erred by sentencing him to extended-term sentences on the obstruction-of-justice, resisting-arrest, and aggravated-battery convictions. *People v. Woods*, No. 4-09-0134 (Jan. 15, 2010) (unpublished order under Supreme Court Rule 23). We upheld the court's sentence as to the 60-year extended terms for armed-robbery but vacated the court's sentence as to the obstruction-of-justice, resisting-arrest, and aggravated-battery convictions. *Id.* at 9-10. We concluded the trial court could only impose one extended-term on the offense within the most serious class because defendant was convicted of multiple offenses of differing classes arising from a single course of conduct. *Id.* at 10. (referencing *People v. Peacock*, 359 Ill. App. 3d 326, 337, 833 N.E.2d 396, 405 (2005)). We remanded, directing the court to vacate defendant's extended-term sentences and impose the maximum nonextended-term sentences of five years for aggravated battery, three years for obstruction of justice, and three years for resisting a peace officer. *Id.* at 10-11. (citing

730 ILCS 5/5-8-1(a)(6), (a)(7) (West 2006)) (prescribing maximum, nonextended-term sentences for Class 3 and 4 felonies).

¶ 18 C. Postconviction Proceedings

¶ 19 On February 18, 2011, defendant filed a postconviction petition, arguing (1) trial and appellate counsel were ineffective for failing to argue he was not proved guilty beyond a reasonable doubt, (2) trial counsel was ineffective for failing to investigate DNA tests performed on a BB gun, (3) the police and prosecutor suppressed favorable DNA evidence, and (4) defense counsel was ineffective for advising him not to testify. In a letter filed on September 19, 2011, the trial court stated the petition had moved to the second stage under the Post-Conviction Hearing Act (Act) (725 ILCS 5/122-1 to 122-7 (West 2010)) and the court had appointed the public defender to represent defendant. On February 22, 2012, defendant filed a motion, followed by a letter to the same effect, asking the court to appoint another attorney to represent him because his attorney, Public Defender Keith Davis, had not contacted him.

¶ 20 At a status hearing on March 5, 2012, the trial court stated, "[i]t's my understanding, Mr. Davis, *** that you have conveyed to [defendant] your fairly lengthy memorandum analyzing his case and making recommendations to him." Davis responded, "I have," and stated defendant had not yet responded. Davis requested a continuance to allow defendant more time to respond. Defendant complained counsel said his postconviction petition had no merit and "tried to coerce me to withdraw my petition."

¶ 21 On April 25, 2012, postconviction counsel filed a "Motion for Finding of 'No Merit' in Post-Conviction; Motion to Withdraw; Rule 651c Certificate." The motion included a detailed summary of the facts surrounding defendant's conviction and defendant's allegations, and it explained why counsel believed each of defendant's allegations had no merit. The motion

is 12 pages long. The motion also included an Illinois Supreme Court Rule 651(c) (eff. Dec. 1, 1984) certificate, stating counsel "consulted with the Defendant, either by mail or in person, to ascertain Defendant's contentions of deprivation of constitutional right and has examined the record of proceedings at trial; *** [and] made any amendments to the pro se Petition necessary for adequate presentation of [defendant's] proceedings."

¶ 22 At the next hearing, on June 22, 2012, the trial court addressed defendant's claim postconviction counsel failed to contact him. The court stated counsel and defendant "have had the opportunity to speak in person since that time and there has been an exchange of documents by which the complained lack of communication would be resolved or cured." The court explained to defendant it was "denying [defendant's] motion to fire [counsel]" and urged defendant to contact counsel to "communicate and document your communication with him in order to see whether or not he wants to change directions and advance your claim."

¶ 23 At the next hearing on September 4, 2012, the trial court again addressed defendant's motion for substitution of attorney, finding "[t]here isn't any basis upon which the court can find that Mr. Davis' representation is ineffective." Again the court admonished defendant "to communicate with counsel in writing if there is anything additional that he wants Mr. Davis to consider with regard to his position on the motion for a finding of no merit[,] *** within the next three weeks."

¶ 24 On October 17, 2012, defendant sent a letter to counsel, stating he had several things he would like included in an amended petition. In relevant part, defendant stated his family located two alibi witnesses. One witness was deceased and the other, Cortez Gleghorn, was last known to be living at 820 East Washington Street, presumably in Bloomington, Illinois. The letter asked counsel to find Gleghorn and "get a signed affidavit." Defendant sent a second

letter, dated October 31, 2012, stating Gleghorn could testify as to "where he saw me and who he saw me with on the night of this alleged robbery." Defendant also stated, "I did not propose that you write out some lie and to [*sic*] get a witness to sign it." Defendant's frustration with counsel is clear from his letter, stating, "[it's] you who is playing games with my life for your joyous kicks."

¶ 25 On November 19, 2012, postconviction counsel sent two letters. Both briefly describe the date, time, and place of the armed robbery for which defendant was convicted and included a picture of defendant. The first letter, to defendant's trial counsel, stated defendant "asserts that he told you about alibi witnesses which you refused to either interview or call as trial witnesses." The letter requested trial counsel "write down the essence of whatever evidence you can offer on [defendant's] behalf and return it in the enclosed envelope." The second letter, to Cortez Gleghorn, stated, "[defendant] asserts that you can show that he did not commit the crimes and are willing to so testify" and it requested Gleghorn to respond by writing down "whatever evidence you can offer on [defendant's] behalf."

¶ 26 At the next hearing, on November 26, 2012, postconviction counsel told the trial court defendant asked him to locate an anticipated alibi witness, he had been successful in locating the witness, and he had written to the witness. Counsel requested more time to allow the witness to respond and for him to make appropriate filings if the witness could support defendant's claims. The record does not demonstrate whether defendant's trial counsel responded to Davis's letter. The court continued the matter until January 30, 2013.

¶ 27 At the next hearing, Davis stated Gleghorn had not responded to his letter and he did not believe "that's going to be something we can explore fruitfully in connection with the matter." Davis asked the court to consider his motion to withdraw. The trial court agreed each

argument in defendant's postconviction petition was meritless and granted postconviction counsel's motion to withdraw, dismissing the petition.

¶ 28 This appeal followed.

¶ 29 II. ANALYSIS

¶ 30 A. Reasonable Assistance in Postconviction Proceedings

¶ 31 "The [Act] provides a remedy to criminal defendants who claim that substantial violations of their constitutional rights occurred in their trials." *People v. Johnson*, 154 Ill. 2d 227, 233, 609 N.E.2d 304, 307 (1993). While a defendant has no constitutional right to postconviction counsel, the Act grants indigent defendants the right to counsel when the petition is not dismissed as frivolous or patently without merit. *People v. Lander*, 215 Ill. 2d 577, 583, 831 N.E.2d 596, 600 (2005) (citing 725 ILCS 5/122-4 (West 2000)). As the right to counsel is wholly statutory, a defendant is only entitled to the level of assistance required by the Act. *Id.* "The Act requires postconviction counsel to provide a 'reasonable level of assistance' to a defendant." *Id.* (quoting *People v. Owens*, 139 Ill. 2d 351, 361, 564 N.E.2d 1184, 1188 (1990)). The reasonable-assistance standard provides less protection than that guaranteed by the federal and state constitutions. *People v. Pendleton*, 223 Ill. 2d 458, 472, 861 N.E.2d 999, 1007 (2006).

¶ 32 Illinois Supreme Court Rule 651(c) (eff. Dec. 1, 1984) outlines appointed counsel's specific duties in postconviction proceedings. *People v. Turner*, 187 Ill. 2d 406, 410, 719 N.E.2d 725, 728 (1999). Rule 651(c) requires the record in postconviction proceedings demonstrate appointed counsel "has consulted with petitioner either by mail or in person to ascertain his contentions of deprivation of constitutional right, 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) (Dec. 1, 1984). "The purpose of the rule is to ensure that postconviction counsel shapes the defendant's claims into a proper legal form and presents them to the court." *People v. Profit*, 2012 IL App (1st) 101307, ¶ 18, 974 N.E.2d 813.

¶ 33 A rebuttable presumption counsel provided reasonable assistance is created when postconviction counsel files a Rule 651(c) certificate. *Id.* ¶ 19, 974 N.E.2d 813. In this case, counsel filed a Rule 651(c) certificate, triggering the presumption defendant received reasonable assistance. Consequently, it is defendant's burden to demonstrate postconviction counsel failed to substantially comply with Rule 651(c). *Id.* We apply the *de novo* standard in reviewing an attorney's compliance with a supreme court rule. *Id.* ¶ 17, 974 N.E.2d 813.

¶ 34 B. Counsel's Failure To Amend Defendant's Petition

¶ 35 Defendant argues he was not afforded reasonable assistance of counsel in the postconviction proceedings because postconviction counsel failed to (1) sufficiently attempt to secure an affidavit from a potential alibi witness and (2) secure an affidavit from defendant describing the potential alibi witness's testimony. We address each argument in turn.

¶ 36 1. *The Gleghorn Affidavit*

¶ 37 Defendant first argues postconviction counsel failed to adequately attempt to secure an affidavit from Gleghorn, his potential alibi witness, because counsel sent Gleghorn a letter but did not ensure it was ever received. The State argues postconviction counsel was not required to do more to investigate defendant's alibi defense because it did not relate to an issue raised in defendant's postconviction petition and would have been insufficient to raise a claim of actual innocence. We conclude defendant has failed to rebut the presumption counsel provided reasonable assistance.

¶ 38 The Illinois Supreme Court has held, " '[p]ost-conviction counsel is only required to investigate and properly present the *petitioner's* claims.' " (Emphasis in original.) *Pendleton*, 223 Ill. 2d at 472, 861 N.E.2d at 1007 (quoting *People v. Davis*, 156 Ill. 2d 149, 164, 619 N.E.2d 750, 758 (1993)). In other words, counsel need only examine the record to the extent necessary to adequately present and support those constitutional claims raised in the defendant's petition. *Id.* at 475, 861 N.E.2d at 1009. "While postconviction counsel *may* conduct a broader examination of the record (*Davis*, 156 Ill. 2d at 164[, 619 N.E.2d at 758]), and may raise additional issues if he or she so chooses, there is no obligation to do so." (Emphasis in original.) *Id.* at 476, 861 N.E.2d at 1009.

¶ 39 Defendant's postconviction petition argued (1) trial and appellate counsel were ineffective for failing to argue he was not proved guilty beyond a reasonable doubt, (2) trial counsel was ineffective for failing to investigate DNA tests performed on a BB gun, (3) the police and prosecutor suppressed favorable DNA evidence, and (4) counsel was ineffective for advising him not to testify. The State argues, even reading defendant's claims liberally, evidence regarding an alibi defense has no bearing on these claims.

¶ 40 Defendant, however, argues he specifically asked Davis to amend his petition to include a claim related to the alibi witness and Davis represented to the court he was attempting to contact the witness and would consider amending the petition depending on the response he received. Further, defendant's claim arguably could have triggered an actual-innocence claim, which a defendant does not waive by failing to raise it in an initial postconviction petition. See *Profit*, 2012 IL App (1st) 101307, ¶ 27, 974 N.E.2d 813. Thus, because of counsel's representations to the court and the fact the actual-innocence claim would not have been waived, we do not agree counsel had no duty to attempt to contact Gleghorn.

¶ 41 However, defendant has failed to rebut the presumption postconviction counsel did not meet his obligations under Rule 651(c). In *People v. Kirk*, 2012 IL App (1st) 101606, ¶ 25, 978 N.E.2d 248, the court held generally, a trial court may assume counsel made a concerted effort to obtain affidavits in support of defendant's claims, but was unable to do so, when a postconviction petition is not supported by affidavits and counsel files a Rule 651(c) certificate. Here, counsel investigated Gleghorn's potential as a witness. Counsel sent Gleghorn a letter on November 19, 2012, and asked to continue the hearing on his motion to withdraw to allow Gleghorn time to respond to his letter. As of January 30, 2013, Gleghorn had not responded to counsel's inquiry. The record further demonstrates defendant knew only Gleghorn's name and last known address, limiting the methods available for counsel to contact Gleghorn. Nothing in the record demonstrates counsel did not attempt to verify Gleghorn received the letter or attempt to contact him by other means.

¶ 42 Moreover, "[a]lthough Rule 651(c) requires counsel to consult with defendant either by mail or in person, counsel is not required to correspond with defendant's unavailable [witnesses] to pursue redundant, nonexculpatory evidence." *People v. Broughton*, 344 Ill. App. 3d 232, 240, 799 N.E.2d 952, 960 (2003). Defendant's witness was unavailable, as he did not respond to the letter sent to his last known address and it appears defendant and counsel knew of no other way to contact him. Further, as in *Broughton*, Gleghorn's testimony would have been insufficient to establish an actual-innocence claim. See *Id.* at 240, 799 N.E.2d at 959-60. Defendant told counsel Gleghorn could testify as to "where he saw me and who he saw me with on the night of [the robbery]." From this description, it is far from clear whether Gleghorn's testimony could provide an alibi or simply name another unknown individual who might be an alibi witness.

¶ 43 Even if Gleghorn could have provided exculpatory evidence, to establish an actual-innocence claim, his testimony would have to be " 'of such a conclusive character that it would probably change the result of retrial.' " *People v. Ortiz*, 235 Ill. 2d 319, 336, 919 N.E.2d 941, 951 (2009) (quoting *People v. Harris*, 206 Ill. 2d 293, 301, 794 N.E.2d 181, 188 (2002)). The evidence against defendant was overwhelming. Three witnesses identified him personally as one of the men who robbed them, two other witnesses identified him by the distinctive clothing he was wearing on the night of the robbery, and police officers recovered stolen items along the path defendant was chased by the police, all within minutes of the robbery. Defendant was first seen by Officer Buchanan within four blocks of the robbery, also within minutes of the call to police by Sarah Joyce, wearing distinctive clothing as described by the victims. He was arrested after attempting to flee the police, who were chasing him, once Barko, the police dog, cornered him. Thus, defendant was arrested near the scene of the crime, wearing clothes as exactly described by the victims, within minutes of the incident. The purses and a gun were found along the path defendant ran. It is hard to fathom what type of alibi defendant could possibly assert. "Alibi" is defined as, "A defense based on the physical impossibility of a defendant's guilt by placing the defendant in a location other than the scene of the crime at the relevant time." Black's Law Dictionary 79 (8th ed. 2004). In light of the strength of the evidence against defendant and defendant's vague description of Gleghorn's testimony, there is no likelihood Gleghorn's testimony could establish an actual-innocence claim. Thus, under the circumstances, the record does not demonstrate counsel failed to comply with Rule 651(c).

¶ 44 2. *An Affidavit From Defendant*

¶ 45 Defendant argues, even if counsel conducted an adequate investigation and determined Gleghorn would not have been a fruitful witness, counsel should still have amended the petition and attached defendant's own affidavit to substantiate the claim. We disagree.

¶ 46 Defendant likens this case to *Turner*, 187 Ill. 2d at 414, 719 N.E.2d at 730, where the supreme court found postconviction counsel violated Rule 651(c). In *Turner*, counsel argued for an evidentiary hearing without making routine, necessary amendments or amending the *pro se* petition to include required affidavits. *Id*. According to the court, counsel's conduct demonstrated he "was ignorant of one of the most basic principles of postconviction proceedings," that "a petitioner is entitled to an evidentiary hearing on a post-conviction claim '*only* if he has made a substantial showing, based on the record and supporting affidavits, that his constitutional rights were violated.' (Emphasis in original.)" *Id.* at 415, 719 N.E.2d at 730 (quoting *People v. Erickson*, 183 Ill. 2d 213, 222, 700 N.E.2d 1027, 1032 (1998)). Unlike *Turner*, the record indicates postconviction counsel did not amend defendant's petition because he concluded defendant had no meritorious claims.

¶ 47 As postconviction counsel believed defendant's claims were meritless, this case is more appropriately compared to *Profit*, 2012 IL App (1st) 101307, 974 N.E.2d 813. In *Profit*, the court stated "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, 974 N.E.2d 813. The defendant in *Profit* claimed his counsel failed to amend his petition to raise certain additional *pro se* allegations, which were stricken by the trial court. *Id.* The court explained Rule 651(c) does not require counsel to amend a petition when such an amendment would " 'only further a frivolous or patently nonmeritorious claim.' " *Id.*

¶ 48 The court in *Profit* explained Illinois Supreme Court Rule 651(c) (eff. Dec. 1, 1984) does not require counsel to amend a petition to preserve a meritless claim. *Id*. Such a rule would conflict with Illinois Supreme Court Rule 137(a) (eff. Feb. 1, 1994), which states "[t]he signature of an attorney or party constitutes a certificate by him that he has read the pleading, motion or other document; that to the best of his knowledge, information, and belief formed after reasonable inquiry it is well grounded in fact and is warranted by existing law or a good-faith argument for the extension, modification, or reversal of existing law." In other words, "[i]f the attorney does not believe that the petition can be amended or presented to state a meritorious issue, then the attorney is legally and ethically required not to sign that petition." *People v. Greer*, 341 Ill. App. 3d 906, 909, 793 N.E.2d 217, 220 (2003), *aff'd*, 212 Ill. 2d 192, 817 N.E.2d 511 (2004).

¶ 49 Our conclusion is also supported by *People v. Perkins*, 229 Ill. 2d 34, 890 N.E.2d 398 (2007). In *Perkins*, the appellate court held counsel violated Rule 651(c) because his arguments in response to the State's motion to dismiss the petition as untimely were legally without merit. *Id.* at 50, 890 N.E.2d at 407. The supreme court rejected this argument, explaining the record did not indicate defense counsel could have made another, more effective argument and the reviewing court should not presume such an argument was available to the defendant. *Id.* at 51, 890 N.E.2d at 408. Rather, the court concluded the Rule 651(c) certificate filed by counsel created a presumption counsel's argument was the best option available to defendant. *Id.*

¶ 50 Here, postconviction counsel affirmed to the trial court he did not amend defendant's petition because he concluded defendant had no meritorious arguments. Nothing in the record suggests defendant could have furnished an affidavit establishing a meritorious

argument supporting an actual-innocence claim or any of defendant's other claims. In fact, the record supports just the opposite conclusion. Counsel filed a Rule 651(c) certificate, triggering the presumption he complied with the rule. See *Profit*, 2012 IL App (1st) 101307, ¶ 19, 974 N.E.2d 813. Defendant did not rebut this presumption. As a result, we do not find counsel provided unreasonable assistance. The trial court properly dismissed defendant's claims.

¶ 51 III. CONCLUSION

¶ 52 For the reasons stated, we affirm the trial court's judgment. As part of this judgment, we award the State its $50 statutory assessment against defendant as costs of this appeal. 55 ILCS 5/4-2002(a) (West 2012).

¶ 53 Affirmed.