

NOTICE
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2021 IL App (5th) 180429-U

NOS. 5-18-0429, 5-19-0325 cons.

IN THE

APPELLATE COURT OF ILLINOIS

FIFTH DISTRICT

NOTICE
This order was filed under Supreme Court Rule 23 and is not precedent 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,)	St. Clair County.
)	
v.)	No. 11-CF-867
)	
STANLEY CHAIRS,)	Honorable
)	Robert B. Haida,
Defendant-Appellant.)	Judge, presiding.

JUSTICE WELCH delivered the judgment of the court.
Justices Barberis and Vaughan concurred in the judgment.

ORDER

¶ 1 *Held:* Postconviction counsel complied with Illinois Supreme Court Rule 651(c) (eff. July 1, 2017) and provided reasonable assistance. Because the defendant’s postconviction claims were without merit, he is not entitled to additional postconviction proceedings.

¶ 2 The defendant, Stanley Chairs, appeals from the denial of his postconviction petition for relief under the Post-Conviction Hearing Act (Act) (725 ILCS 5/122-1 *et seq.* (West 2016)) at the second stage of the postconviction proceedings. For the following reasons, we affirm.

¶ 3

I. BACKGROUND

¶ 4

A. The Defendant's Jury Trial

¶ 5 On July 15, 2011, the defendant was charged by indictment with one count of first degree murder (720 ILCS 5/9-1(a)(3) (West 2010)). It was alleged that on or about April 23, 2011, the defendant, without lawful justification and while committing the forcible felony of armed robbery, shot the victim, Joshua Miller, in the head with a pistol, thereby causing his death. The State subsequently filed a notice of intent to seek a mandatory sentencing enhancement because the defendant personally discharged a firearm causing an individual's death (730 ILCS 5/5-8-1(a)(1)(d)(iii) (West 2010)). The State also indicated its intent to proceed on a theory of accountability against the defendant.

¶ 6 Prior to trial, the defendant filed a motion to suppress, arguing that he did not knowingly and intelligently waive his *Miranda* rights when he was interviewed on June 21, 2011, by East St. Louis Police Department detective Orlando Ward; Illinois State Police special agent Calvin Brown; and Bureau of Alcohol, Tobacco, Firearms, and Explosives special agent Dan Owens. He argued that his statement was induced by promises of leniency, deceit, and "improper inducement" in violation of his federal and state constitutional rights to remain silent, to be represented by counsel, and to due process.

¶ 7 At the hearing on the motion to suppress, Ward testified that he interviewed the defendant in a small room with Brown and Owens. The officers were in plain clothes, and no weapons were displayed. The defendant was not deprived of food, water, or sleep, and he was not touched in any violent manner. Ward read the defendant his *Miranda* rights, asked if he understood each one, had him initial after each one indicating that he clearly

understood, and then had him sign the bottom of the *Miranda* waiver form. Ward believed that the defendant was 18 or 19 years old at the time of the interview, that he had made it through the eleventh grade, and that he had no problems understanding the officers. Ward testified that the defendant agreed to answer questions without an attorney.

¶ 8 The defendant testified that he was scared at the beginning of the interview and did not want to talk. He then asked how much time he was facing, and Ward said it would be up to the state's attorney. Brown said not to worry about the sentence and to worry about telling the truth to help himself. Ward explained that honesty would go a long way. Brown then said, "it would be better *** to tell the truth," and an honest person would receive "a lesser penalty than someone who lies." The defendant testified that he wanted to get home to his pregnant girlfriend, and the officers indicated he would be able go home sooner if he talked to them and was honest.

¶ 9 The officers did not make any specific promises or tell the defendant that he would be sentenced to a specific number of years if he made a statement. However, after Ward's and Brown's statements about telling the truth, the defendant became "much more cooperative." The defendant testified that he felt he would "be in a better place" and get a lesser sentence if he offered some information. During the defendant's break, Ward talked to him about unrelated matters, and there was no coercion, intimidation, threats, or promises. Ward testified that, to the best of his knowledge, the defendant's statement was made freely and voluntarily, and he never expressed any confusion.

¶ 10 The trial court denied the motion, finding that, while the officers "told the defendant that honesty helps get a lesser sentence and will let him get home to his girlfriend earlier,"

the disclaimer that they did not control the sentence “save[d] the voluntariness of the confession.” The court added, “Subject to some other limiting criteria, such as the intellectual level of the defendant, which does not exist in this case, I believe [his] statement was not coerced and was made voluntarily after knowingly waiving his rights.”

¶ 11 For the purposes of this appeal, little needs to be said about the evidence adduced at trial. The jury found the defendant guilty of first degree murder and of possessing a firearm during the offense, both by accountability.

¶ 12 On May 30, 2013, a sentencing hearing was held. In aggravation, the victim’s brother, Darius Miller, testified that the victim was a faithful fiancé; a loving and committed father; a caring son and grandson; a gentle, protective, and supportive brother; a helpful nephew; and a fun and considerate uncle. Darius read the family’s victim impact statement, which included the family’s request that the defendant be sentenced to the maximum penalty and that the trial court “hand down a sentence that helps [the defendant] understand, acknowledge and appreciate the seriousness and the gravity of his crime.”

¶ 13 In mitigation, the defendant’s fiancée, Cia Hardin, testified that she had two children with the defendant, ages one and two. She testified that the defendant was a good and loving father. Hardin stated that the defendant helped with rent and groceries and took the children to places such as the zoo. Hardin stated that she was now responsible for their children alone, that she sometimes received assistance from the defendant’s parents, and that she was worried about the children growing up without a father.

¶ 14 The defendant’s mother, Yolanda Carter, testified that the defendant grew up in Centreville with his grandmothers, grandfather, aunts, and cousins. As the defendant grew

up, Centreville became a “rough” area, and as the crimes escalated, she noticed a change in him. The defendant made raps and songs on the side, was a good son and grandson, shoveled snow and cut grass, used his earnings to help the family, and attended church. Carter believed that the defendant would stay out of trouble when he got out of prison.

¶ 15 The defense submitted the defendant’s GED certificate, where he scored at least 300 points above what was needed for him to pass. Trial counsel asked the trial court to sentence the defendant to 35 years and to consider the excessive hardship to his children in mitigation. Trial counsel noted that the defendant was 22 years old and was looking at a minimum of 35 years, which would mean that he would be released in his mid-50s if he received the minimum sentence. While the defendant dropped out of school in 2011, he obtained his GED within months. The defense argued that the defendant had been drinking on the night of the murder, which affected his foresight; he had no prior criminal convictions; and he had been previously employed. He knew the importance of providing for his children financially and contributed when he could. Further, the defendant was not proved to have personally discharged the firearm, but rather, he was convicted on a theory of accountability. Additionally, because this was a felony-murder case, the State did not have to prove that the defendant had the same mental state as his codefendant. Instead, all the State had to prove was that the defendant was participating in a forcible felony that was the proximate cause of the victim’s death. The defendant “made a tragic lapse in judgment” and had the capacity to be rehabilitated; he was not an inherently dangerous member of the community. The defendant apologized in his statement of allocution.

¶ 16 The State asked the trial court for a 45-year sentence because the defendant and his codefendant destroyed the victim's many familial relationships. The State argued that the defendant showed no remorse after the victim was shot, where he put on gloves and reached inside the defendant's vehicle for valuables. He also went to a club and danced with his codefendant afterward, and it was initially his idea to rob a security guard.

¶ 17 With respect to the factors in aggravation, the State argued that a 45-year sentence was necessary to deter others; that the victim suffered bodily harm; that the defendant was a 20-year-old man who should have known better; that the defendant was not dumb but rather very smart; that he was in good health; and that he violated the inmate discipline code in prison for battery, fighting, extortion, blackmail, attempting to be a block boss, demanding or receiving money for favors or protection, and a "violation of a major nature." The State also indicated that the defendant showed no remorse because he was referred to a jail psychologist as a suicide precaution on three different occasions, but then he told the psychologist that he was not suicidal and "was just playing around."

¶ 18 The trial court reviewed the presentence investigation report, the factors in aggravation and mitigation, counsel's arguments, the testimony and exhibits presented during sentencing, and the defendant's statement. The court noted that this was a tragedy for both families and agreed that a lesser sentence was appropriate. The court acknowledged that the defendant was tried and convicted on an accountability theory, but that the jury "also found that [he] had a gun." The court explained "Now, I'm not suggesting that you're the shooter. But why did you have a gun? What's a twenty-year-old kid doing out—a young man doing out with a gun?" The court found that the

defendant's actions after the killing did not show remorse, where if he "were truly innocent," he should have called for help.

¶ 19 The defendant was sentenced to a total of 40 years' imprisonment, which included the 15-year mandatory firearm sentencing enhancement, followed by 3 years of mandatory supervised release. The court indicated that it would recommend that the Illinois Department of Corrections consider his placement so he could improve himself and continue his education. The defendant's subsequent motion to reduce and/or modify sentence, alleging that his sentence was excessive, was denied.

¶ 20 B. Direct Appeal

¶ 21 The defendant filed a direct appeal, challenging the trial court's denial of his motion to suppress and his sentence. Specifically, the defendant contended that (1) his confession was involuntary because it was compelled by the law enforcement officers' promise of leniency, (2) his confession should have been suppressed because the officers refused to provide him with an attorney after he invoked his constitutional right to counsel, and (3) his 40-year sentence was excessive.

¶ 22 This court affirmed his conviction and sentence in *People v. Chairs*, 2015 IL App (5th) 130415-U. This court found that "the officers' statements to the defendant did not constitute a promise of leniency coupled with a specific benefit," and that even if they implied a lesser sentence in exchange for the defendant's cooperation, their statements were "qualified by the officers' specifically telling the defendant that only the prosecutor could make sentencing decisions." *Id.* ¶ 19. Further, this court found that his age, intelligence, experience, and the intensity and duration of the interrogation did not show

that his will was overcome, and his confession was voluntary. As to the defendant's second contention, we held that the officers could have reasonably concluded that his question ("how could [he] get a free lawyer?") was "only an inquiry about the process or the procedure for obtaining a free attorney rather than an unambiguous declaration of the right to counsel." *Id.* ¶ 26. With respect to the third and final contention, we determined that the trial court did not abuse its discretion after considering all the proper sentencing factors, including his age, education, and prior criminal history.

¶ 23 C. The Defendant's Postconviction Proceedings

¶ 24 On January 12, 2017, the defendant filed a *pro se* petition for postconviction relief, challenging, *inter alia*, what he alleged was a *de facto* life sentence and the voluntariness of his statement to law enforcement. The premise for both challenges revolved around a line of cases discussing recent developments in neuroscience regarding juveniles and emerging adults. The defendant argued that his sentence violated the eighth amendment of the United States Constitution (U.S. Const., amend. VIII) and the proportionate penalties clause of the Illinois Constitution (Ill. Const. 1970, art. I, § 11) as applied to him because he was only 18 years old at the time of the murder. He argued that his sentence would be unconstitutional for a juvenile, and he should be treated like a juvenile because he suffered from the same immaturity at the time of his offense. Further, he asserted that his statement was not knowingly and voluntarily made because of his inexperience with the law, the circumstances surrounding the arrest, the aforementioned neuroscience studies, and statements made by the investigating officers.

¶ 25 Postconviction counsel was appointed, the petition advanced to second-stage proceedings, and an amended motion was filed. The amended motion asserted four claims challenging the constitutionality of the defendant's sentence, arrest, and confession. The State filed a motion to dismiss alleging, *inter alia*, that counsel failed to sign the amended petition and that the four constitutional claims were waived, barred by *res judicata*, or lacked support such as an affidavit.

¶ 26 In response, postconviction counsel filed a second amended petition alleging the same four constitutional violations. First, that the defendant was denied his right against unreasonable search and seizure, in that during the early hours on June 21, 2011, police officers entered his home and detained him on a 48-hour hold without consent to enter his residence or a warrant to arrest him. Second, that he was denied his fifth amendment rights, in that his confession was involuntary due to his immaturity where he was “barely 18 years of age and naïve regarding criminal proceedings as he had never been in trouble with the law before.” Third, that he was denied due process and equal protection because he was under a great deal of stress, pressure, and duress when he made his statement, and thereby was not afforded the opportunity to waive his constitutional rights to consult with an attorney or remain silent, making his confession involuntary. Lastly, that he was denied his rights against cruel and unusual punishment under the eighth amendment and to proportionate penalties provided by the Illinois Constitution, where he was 18 years old at the time of the crime, had no prior criminal history, was not the shooter, was convicted under a felony murder theory, was sentenced to 40 years' imprisonment, and was similarly

situated to defendant in *People v. House*, 2015 IL App (1st) 110580, *appeal denied, judgment vacated, People v. House*, No. 122134 (Ill. Nov. 28, 2018) (supervisory order).

¶ 27 The State again filed a motion to dismiss, which alleged basically the same deficiencies with the second amended petition as it had for the first amended petition. A hearing on the motion to dismiss was held, during which the parties discussed the applicability of *House* to the defendant's sentencing claim. At the conclusion of the hearing, the trial court indicated that it would review the record and read the *House* decision again. The court then took the matter under advisement.

¶ 28 On February 26, 2018, the trial court issued a written order granting the State's motion to dismiss the defendant's second amended petition for postconviction relief. The court specifically indicated that the defendant's fourth amendment claim was waived and not supported by affidavit, and his fifth amendment and sentencing claims were barred by *res judicata*. After the court's ruling, postconviction counsel filed a certificate of compliance with Illinois Supreme Court Rule 651(c) (eff. July 1, 2017).

¶ 29 On March 14, 2018, the defendant filed a *pro se* motion to reconsider the trial court's dismissal of his postconviction petition and a motion for leave to proceed *pro se*. He later filed an amended motion to reconsider, alleging, *inter alia*, that his postconviction counsel failed to obtain a signed and notarized affidavit from Hardin; counsel provided unreasonable assistance in violation of Rule 651(c) by failing to amend his *pro se* petition as necessary for adequate presentation of his contentions; and counsel failed to attach police reports, studies, case law, and other supporting documents provided by the

defendant. A hearing was held, and the court subsequently denied the defendant's motion after reviewing it and counsel's certificate of compliance. The defendant appealed.

¶ 30 While appeal No. 5-18-0429 was pending in this court, the defendant filed a motion for leave to file a successive postconviction petition, which was denied for failing to meet the cause-and-prejudice standard. The defendant appealed, and this court ordered the appeals consolidated.

¶ 31

II. ANALYSIS

¶ 32 On appeal, the defendant initially contends that his postconviction counsel provided unreasonable assistance in violation of Rule 651(c). Alternatively, he argues that we should remand for a third-stage evidentiary hearing where the allegations that his constitutional rights were violated were not rebutted by the record.

¶ 33 The Act (725 ILCS 5/122-1 *et seq.* (West 2016)) provides a collateral means for a defendant to challenge a conviction or sentence for a substantial violation of a federal or state constitutional right. *People v. Bailey*, 2017 IL 121450, ¶ 17. The Act establishes a three-stage process for adjudicating a postconviction petition. *Id.* ¶ 18. At the first stage of the postconviction proceedings, the trial court must determine, without any input from the State, whether defendant's petition is frivolous or patently without merit. *Id.*; 725 ILCS 5/122-2.1(a)(2) (West 2016). If the petition is not dismissed at the first stage, the petition must be docketed for further consideration. 725 ILCS 5/122-2.1(b) (West 2016).

¶ 34 At the second stage, the trial court must determine whether defendant is indigent and, if so, whether he wishes to have counsel appointed to represent him. *Id.* § 122-4. After an appointment, Illinois Supreme Court Rule 651(c) requires counsel (1) to consult

with defendant by mail or in person to ascertain his contentions of deprivation of constitutional rights, (2) to examine the record of the proceedings at the trial, and (3) to make any amendments that are necessary to the petition previously filed by a *pro se* defendant. Ill. S. Ct. R. 651(c) (eff. July 1, 2017).

¶ 35 After appointed counsel has made any necessary amendments to the petition, the State may file a motion to dismiss. 725 ILCS 5/122-5 (West 2016); *People v. Kirkpatrick*, 2012 IL App (2d) 100898, ¶ 13. At the second stage, the trial court determines whether defendant has made a substantial showing of a constitutional violation, and if a substantial showing is made, the petition proceeds to the third stage for an evidentiary hearing; if no substantial showing is made, the petition is dismissed. *People v. Edwards*, 197 Ill. 2d 239, 246 (2001).

¶ 36 Although, as stated above, the Act provides for the appointment of counsel at an indigent petitioner's request when a petition reaches the second stage of proceedings (725 ILCS 5/122-4 (West 2016)), defendant does not have a constitutional right to effective assistance of counsel at a postconviction proceeding. *People v. Moore*, 189 Ill. 2d 521, 541 (2000). Instead, the Act provides a statutory right to "a reasonable level of assistance by appointed counsel." *Id.* One aspect of reasonable assistance is substantial compliance with Rule 651(c). *People v. Mason*, 2016 IL App (4th) 140517, ¶ 19. Compliance with Rule 651(c) may be shown by the filing of a certificate of counsel. Ill. S. Ct. R. 651(c) (eff. July 1, 2017). The filing of a facially valid Rule 651(c) certificate creates a rebuttable presumption that counsel acted reasonably and complied with the rule. *People v. Profit*,

2012 IL App (1st) 101307, ¶ 19. We review counsel’s compliance with Rule 651(c) *de novo*. *People v. Bass*, 2018 IL App (1st) 152650, ¶ 13.

¶ 37 Here, postconviction counsel filed a Rule 651(c) certificate indicating that he examined the entire record of the trial and sentencing proceedings; consulted with the defendant by correspondence on 10 different occasions to ascertain his contentions as to the deprivation of his constitutional rights; personally met with the defendant twice to ascertain his contentions as to the deprivation of his constitutional rights; “received and reviewed correspondence from Defendant dated 3/15/17 (4) letters, 6/7/17, 8/17/17 (2) letters, 9/14/17, 10/8/17, 10/17/17, 11/1/17, 11/6/17, 11/20/17 and 11/28/17 *Pro Se* Motion to ascertain his contentions of deprivation of constitutional rights”; and “made amendments to the Petition for Post-Conviction Relief, filed *pro se*, that are necessary for adequate presentation of Defendant’s contention and filed an Amended Petition for Post-Conviction Relief on June 9, 2017.” Although the defendant has highlighted that counsel’s certificate of compliance was filed after the trial court dismissed his amended petition, he does not explain how that affects the validity of the certificate. Accordingly, there is a rebuttable presumption that postconviction counsel acted reasonably and, in order to overcome this presumption, the defendant bears the burden of “demonstrating his attorney’s failure to substantially comply with the duties mandated by Rule 651(c).” *Profit*, 2012 IL App (1st) 101307, ¶ 19. We will discuss the defendant’s argument that the certificate is rebutted by the record along with his specific claims regarding postconviction counsel’s noncompliance with Rule 651(c) below.

¶ 38 The defendant first argues that his postconviction counsel was unreasonable for failing to amend his petition to adequately present his sentencing claim. We begin with the defendant’s assertion that postconviction counsel unreasonably “deleted references to valid legal arguments and failed to provide evidentiary support” to his sentencing claim. In the defendant’s *pro se* postconviction petition and on appeal, he cited scientific research concluding that brain development does not stop once a person reaches the age of 18 as well as case law discussing how such research affects sentencing decisions. In the amended petition, however, counsel decided to include only the citation to *House*, 2015 IL App (1st) 110580, *appeal denied, judgment vacated*, *House*, No. 122134 (Ill. Nov. 28, 2018) (supervisory order), in presenting the defendant’s sentencing claim. We find that counsel acted reasonably in his presentation of the sentencing claim.

¶ 39 First, we note that all the cases cited in the defendant’s *pro se* petition, but not included in the amended petition, dealt with juvenile offenders. In fact, *House* was the only case cited in the *pro se* petition that involved a young adult offender rather than a juvenile. Counsel acted reasonably in citing solely to *House*, which was the only case provided by the defendant that actually applied to the circumstances of this case. Second, we find that counsel acted reasonably in omitting references to cases from other jurisdictions, where he could have found that the Illinois authority was more helpful to the defendant’s position. Third, we will not fault counsel for failing to include additional citations to cases that were cited in *House*, as counsel could have reasonably decided that the additional citations were redundant and unnecessary. Finally, the *House* decision included a thorough review of the scientific research regarding the brain development of

emerging adults, and counsel could have reasonably decided that the citation to that decision was sufficient to present the scientific evidence to support the defendant's claim.

¶ 40 It is important to note that when postconviction counsel was appointed in 2017, Illinois law regarding the applicability of *Miller v. Alabama*, 567 U.S. 460 (2012), to “young adults” was just beginning to develop and still remains unsettled. Notwithstanding, the defendant repeatedly urges us to find that postconviction counsel acted unreasonably based upon law that was decided after his postconviction petition was dismissed by the trial court. The defendant faults counsel for failing to more vigorously pursue his argument that he was sentenced to an unconstitutional *de facto* life sentence. However, it was not until *People v. Buffer* was decided in 2019 that Illinois law became settled that a sentence over 40 years constituted a *de facto* life sentence for a juvenile. *People v. Buffer*, 2019 IL 122327, ¶¶ 40-41. Counsel's decisions should not be judged in hindsight, and we cannot expect counsel to have knowledge of law that was not yet settled.

¶ 41 Similarly, the defendant faults postconviction counsel for failing to frame his sentencing claim as an as-applied constitutional challenge. In support of this argument, the defendant cites case law that was decided after his postconviction petition was dismissed. We again decline to judge postconviction counsel in hindsight. However, we will address *People v. Thompson*, 2015 IL 118151, ¶¶ 36-38, 44, which was not included in the defendant's *pro se* petition but is cited on appeal for the proposition that a challenge to a *de facto* life sentence for a young adult should be framed as an as-applied constitutional challenge. There, defendant raised both a facial and an as-applied constitutional challenge to the sentencing statute. *Id.* ¶ 17. He argued that the sentencing statute was

unconstitutional as applied to him because he was 19 years old on the date of the offense, had no criminal history, and suffered years of parental abuse. *Id.* The supreme court distinguished an as-applied challenge from a facial challenge. *Id.* ¶¶ 36-37. The court noted that with a facial challenge, the argument presented is that a statute is unconstitutional under “any set of facts, *i.e.*, the specific facts related to the challenging party are irrelevant.” *Id.* ¶ 36. Conversely, an as-applied challenge claims that a statute is unconstitutional “as it applies to the facts and circumstances of the challenging party.” *Id.* “By definition, an as-applied constitutional challenge is dependent on the particular circumstances and facts of the individual defendant or petitioner.” *Id.* ¶ 37.

¶ 42 In this case, although postconviction counsel did not use the words “as applied” in the amended petition, we find that the allegations could be construed as an as-applied challenge. The allegations focused on the particular facts and circumstances of the defendant. Specifically, the amended petition alleged his 40-year sentence was unconstitutional considering his age, involvement in the offense, lack of criminal history, and life expectancy. Further, the petition cited *House*, which involved an as-applied challenge, and compared the specific facts of the defendant’s case to those present in *House*. The allegations could not be construed as a facial challenge, in that they did not allege that a statute was unconstitutional under any set of facts. The record demonstrates that the postconviction court denied the defendant’s claim after reviewing the record, the pleadings, and the *House* decision, thereby presumably rendering its decision based on the particular facts and circumstances of the defendant’s case.

¶ 43 Even if postconviction counsel had included the scientific research, additional facts, and all the defendant's case law citations, an as-applied proportionate penalties claim would not have succeeded. *Miller* and *House*, even with the allegedly mitigating facts the defendant relies on, would not have supported an as-applied eighth amendment or proportionate penalties claim. *Miller* held that mandatory life without parole sentences for juveniles violate the eighth amendment. *Miller*, 567 U.S. at 489. In *House*, a mandatory natural life sentence was found to violate the proportionate penalties clause where defendant was 19 years old at the time of the offense. *House*, 2015 IL App (1st) 110580, ¶ 101, *appeal denied, judgment vacated, House*, No. 122134 (Ill. Nov. 28, 2018) (supervisory order). Unlike the *Miller* and *House* defendants, the defendant here was not sentenced to a mandatory life sentence. Further, a touchstone of the *Miller* line of cases is that trial courts should not sentence a juvenile or young adult offender to a life sentence without consideration of their youth and attendant circumstances. See *People v. Holman*, 2017 IL 120655, ¶ 46. In this case, the trial court accounted for the defendant's age, education, background, criminal history, and culpability in rendering his sentence. As such, *Miller* and *House* would not have provided legal support for an as-applied eighth amendment or proportionate penalties claim under the circumstances of this case even if postconviction counsel had developed and presented the claim as the defendant demands.

¶ 44 The defendant also contends that postconviction counsel was unreasonable for failing to allege ineffective assistance of trial and appellate counsel in order to overcome the procedural bars of waiver and *res judicata*. Postconviction counsel is not required to advance meritless or spurious claims. *People v. Greer*, 212 Ill. 2d 192, 205 (2004). As the

defendant's sentencing claim would not have been successful, it could not have given rise to a claim of ineffective assistance of counsel, and postconviction counsel did not act unreasonably in omitting such a claim.

¶ 45 The defendant next maintains that postconviction counsel provided unreasonable assistance with respect to his claims that his arrest and subsequent statement to the police were unconstitutional. He specifically argues that postconviction counsel failed to adequately amend the petition with necessary details and available support, and that counsel failed to amend the petition to overcome procedural bars.

¶ 46 As to the defendant's fourth amendment claim regarding his arrest, the defendant did not challenge his arrest prior to or during trial. Similarly, it was not raised on direct appeal. The defendant argues that postconviction counsel was unreasonable in failing to amend the postconviction petition to circumvent waiver by alleging that his pretrial, trial, or appellate counsel was ineffective for failing to raise the issue. However, the defendant has failed to present any facts that would support a claim of ineffective assistance of counsel. The record reveals that postconviction counsel believed the fourth amendment claim regarding the defendant's arrest was waived, and based on the record before us, we do not find that conclusion unreasonable.

¶ 47 We now turn to the defendant's argument as to his statement to police. The postconviction court found that this claim was addressed in a pretrial motion and on direct appeal, and thus, it was barred by *res judicata*. For the following reasons, we agree. Prior to trial, the defense filed a motion to suppress his statement because it was involuntary and induced by promises of leniency. After a hearing, the trial court denied the motion. On

direct appeal, the defendant argued that his confession was involuntary because it was compelled by the law enforcement officers' promise of leniency, and that his confession should have been suppressed because the officers refused to provide him with an attorney after he invoked his constitutional right to counsel. This court found that the officers' statements did not constitute an improper promise of leniency. After reviewing the totality of the circumstances, including the defendant's age, intelligence, experience, and the intensity and duration of the interrogation, this court found that the defendant's confession was voluntarily made. This court further found that the defendant did not unambiguously invoke his right to counsel, and his trial counsel was not ineffective for failing to raise the issue in the motion to suppress or posttrial motion.

¶ 48 In his *pro se* petition, the defendant again argued that he was promised leniency, denied his right to counsel, and made his statement unknowingly and involuntarily. In the amended petition, it was alleged, *inter alia*, that his statement was involuntary due to his age, inexperience with the law, and lack of understanding as to his *Miranda* rights. It was also alleged that he "attempted to invoke his right to counsel but was unable to do so properly." These issues were previously addressed on direct appeal. The fact that Ward was subsequently convicted of police misconduct has no bearing on his actions during the defendant's interrogation, which have already been examined by this court. Further, we previously considered the defendant's age, intelligence, background, experience, mental capacity, and education as part of the totality of the circumstances in determining that his confession was voluntary. Our holding is not affected by the defendant's attempt to base his postconviction claim on the neuroscience studies underlying the *Miller* line of cases,

especially where he has not produced any authority applying such evidence to issues other than sentencing. Because this claim was litigated during trial and raised on direct appeal, it is *res judicata*, and any claim that counsel was ineffective for failing to raise it would be meritless. See *People v. Edwards*, 2012 IL 111711, ¶ 21.

¶ 49 As previously stated, postconviction counsel filed a Rule 651(c) certificate and is thus presumed to have complied with the rule. Having reviewed the record, the defendant's *pro se* petition, and the second amended petition, we find that the defendant has failed to rebut the presumption that postconviction counsel complied with Rule 651(c) and provided reasonable assistance during his postconviction proceedings. Furthermore, as the defendant's postconviction claims were without merit, waived, or barred by *res judicata*, the postconviction court did not err in dismissing his petition, and he is not entitled to additional postconviction proceedings.

¶ 50

III. CONCLUSION

¶ 51 The judgment of the circuit court of St. Clair County is hereby affirmed.

¶ 52 Affirmed.