NOTICE
Decision filed 08/24/26. The text of this decision may be changed or corrected prior to the filing of a Petition for Rehearing or the disposition of the same.

2026 IL App (5th) 250162-U

NO. 5-25-0162

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,	)	Christian County.
	)	
v.	)	No. 16-CF-42
	)	
ROBERT A. STIVERS,	)	Honorable
	)	Bradley T. Paisley,
Defendant-Appellant.	)	Judge, presiding.

PRESIDING JUSTICE CATES delivered the judgment of the court.
Justices McHaney and Hackett concurred in the judgment.

ORDER

¶ 1 *Held*: The judgment of the trial court is affirmed. The defendant has failed to overcome the rebuttable presumption provided by Illinois Supreme Court Rule 651(c), and therefore, postconviction counsel provided reasonable assistance.

¶ 2 The defendant, Robert A. Stivers, appeals the trial court's second stage postconviction dismissal of the defendant's amended postconviction petition. The defendant claims that his postconviction counsel did not provide the required level of reasonable assistance and requests that this court reverse the trial court's second stage dismissal and remand this cause for further proceedings. For the reasons that follow, we affirm.

¶ 3 I. BACKGROUND

¶ 4 Following the death of the defendant's four-month-old son, the defendant was charged and subsequently convicted by a jury of aggravated battery of a child under the age of 13, as well as

first degree murder. The defendant was sentenced to 50 years in the Illinois Department of Corrections. The defendant's conviction was affirmed on appeal. *People v. Stivers*, 2021 IL App (5th) 180338-U. The factual basis for the defendant's convictions is set forth in his prior appeal. *Stivers*, 2021 IL App (5th) 180338-U. Therefore, we recite only the facts necessary for this disposition.

¶ 5 Following the defendant's unsuccessful appeal, he filed a *pro se* postconviction petition (petition) and requested the appointment of counsel. The defendant's petition alleged, among other things, that trial counsel was ineffective in two instances: (1) for failing to file a motion to dismiss for a violation of the defendant's right to a speedy trial, and (2) for failing to object to statements made by the State during closing arguments at trial. The defendant argued in his petition that trial counsel should have moved to dismiss the first degree murder charge because it was not included in the State's superseding indictment, thus his right to a speedy trial was violated. With regard to this issue, the defendant acknowledged that he did not raise this issue at the trial court but requested that the issue be reviewed under trial counsel's performance. Additionally, the defendant asserted that trial counsel should have objected to the State's remarks during closing argument, which alleged that the defendant's expert witness exhibited bias in favor of the defendant. The trial court found that the defendant's petition stated the gist of a constitutional violation and appointed counsel.

¶ 6 On July 12, 2024, postconviction counsel filed an amended postconviction petition (amended petition). The amended petition incorporated the defendant's *pro se* petition and additionally included a claim that the trial court erred in allowing autopsy photographs in the jury deliberation room. The amended petition alleged that the autopsy photographs were more prejudicial than probative and that trial counsel objected at trial but was overruled. Postconviction counsel filed a "certificate of counsel pursuant to Illinois Supreme Court Rule 604(d)" that appears

to have acted as postconviction counsel's Rule 651(c)[1] certificate. In this certificate, postconviction counsel certified that he had consulted with the defendant, examined the trial court record, and made the necessary amendments to the defendant's *pro se* postconviction petition for the adequate presentation of the petition in future proceedings. The State did not file a response to the defendant's amended petition.

¶ 7 On January 30, 2025, the trial court held a hearing on the defendant's amended petition. At the hearing, the trial court noted that there was a potential issue with timeliness on the defendant's initial *pro se* postconviction petition but ultimately found that the discrepancy in filing was not due to the defendant's culpable negligence. Postconviction counsel argued that the defendant's speedy trial rights were violated, that trial counsel was ineffective for failing to object to the State's comments made during closing arguments, and that the statements themselves constituted a constitutional violation. Postconviction counsel additionally argued that the trial court erred in allowing autopsy photographs to be present in the jury deliberation room. The State argued in opposition to all the defendants' claims. Following arguments by the State and postconviction counsel, the trial court dismissed the defendant's amended petition and found that the defendant did not make a substantial showing of a constitutional violation as to all of the issues raised in his amended petition. The defendant now appeals the trial court's dismissal and alleges that postconviction counsel was ineffective. Initially, we note that the defendant raised several issues in his postconviction petition that he did not argue on appeal. Therefore, we only address those claims properly preserved on appeal.

[1]Illinois Supreme Court Rule 651(c) governs the requirements that postconviction counsel must provide to a defendant. Ill. S. Ct. R. 651(c) (eff. July 1, 2017).

¶ 8 II. ANALYSIS

¶ 9 On appeal, the defendant claims that postconviction counsel did not provide reasonable assistance when counsel failed to include an allegation that the defendant's appellate counsel was ineffective for failing to challenge trial counsel's failure to object to the State's improper comments made during closing arguments. The State claims that the defendant has not overcome the rebuttable presumption that postconviction counsel provided reasonable assistance which arose when postconviction counsel filed a Rule 651(c) certificate. Ill. S. Ct. R. 651(c) (eff. July 1, 2017).

¶ 10 The Post-Conviction Hearing Act (Act) (725 ILCS 5/122-1 *et seq.* (West 2022)) allows a defendant to collaterally attack a final judgment and is not a substitute for a direct appeal. *People v. Edwards*, 2012 IL 111711, ¶ 21. The Act provides a three-stage process whereby a convicted defendant may assert that in the proceedings which resulted in the defendant's conviction, there was a substantial denial of the defendant's constitutional rights. See *People v. Addison*, 2023 IL 127119, ¶ 18. During the first stage of postconviction proceedings, the defendant has a "low threshold" and need only provide sufficient facts to present the gist of a constitutional claim. *People v. Brown*, 236 Ill. 2d 175, 184 (2010). During the second stage, the legal sufficiency of the postconviction petition is tested. *People v. Domagala*, 2013 IL 113688, ¶ 35. Counsel may make any amendments that are necessary to the petition previously filed by the *pro se* defendant. *People v. Johnson*, 2021 IL 125738, ¶ 27. After counsel has reviewed the petition, and if necessary, amended the petition, the State may file a motion to dismiss or file an answer. *Johnson*, 2021 IL 125738, ¶ 27. The postconviction petition is dismissed if the defendant fails to make a substantial showing of a constitutional violation through the petition and attached documentation. *People v. Edwards*, 197 Ill. 2d 239, 246 (2001). A postconviction petition dismissal at the second stage is reviewed *de novo*. *People v. Sanders*, 2016 IL 118123, ¶ 31. "Additionally, when the issue

concerns the proper interpretation of a supreme court rule, our review is *de novo*." *Addison*, 2023 IL 127119, ¶ 17.

¶ 11 In postconviction proceedings, the defendant has a statutory, rather than constitutional, right to counsel. 725 ILCS 5/122-4 (West 2022); *People v. Turner*, 187 Ill. 2d 406, 410 (1999). The Act requires postconviction counsel to provide a "reasonable level of assistance." *Turner*, 187 Ill. 2d at 410. Illinois Supreme Court Rule 651(c) imposes specific duties on postconviction counsel to ensure that a reasonable level of assistance has been provided. *People v. Suarez*, 224 Ill. 2d 37, 42 (2007). Rule 651(c) provides as follows:

> "The record filed in that court 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. July 1, 2017).

¶ 12 Filing a Rule 651(c) certificate creates a rebuttable presumption of reasonable assistance. *Addison*, 2023 IL 127119, ¶ 21. "The defendant bears the burden of overcoming that presumption by showing that postconviction counsel did not substantially comply with the strictures of the rule." *Addison*, 2023 IL 127119, ¶ 21. A defendant may overcome this presumption by demonstrating that postconviction counsel did not make all the necessary amendments to a *pro se* petition, including those amendments necessary to overcome any procedural bars. *Addison*, 2023 IL 127119, ¶ 21. In addition, where the trial court has advanced a *pro se* petition to the second stage of proceedings because the petition states the gist of a meritorious constitutional claim, and appointed postconviction counsel identifies claims worth pursuing but fails to shape the claims into proper legal form, there has not been reasonable assistance of postconviction counsel as required by Rule 651(c). *Addison*, 2023 IL 127119, ¶ 26. The failure to comply with Rule 651(c) is not subject to a harmless error analysis; accordingly, if for any reason postconviction counsel

fails to meet their duties under Rule 651(c), a remand is necessary, regardless of the petition's merit. *Addison*, 2023 IL 127119, ¶¶ 33-42. Counsel, however "need not amend the petition or every claim; counsel may conclude that the claim is already adequately addressed or that a claim is frivolous and undeserving of further amendment." *People v. Nesbitt*, 2023 IL App (1st) 211301, ¶ 37.

¶ 13 In the case at bar, postconviction counsel incorporated the defendant's *pro se* postconviction petition into the amended petition. The defendant's general issue in this appeal is that postconviction counsel did not comply with Rule 651(c) when he failed to amend the defendant's petition to include an allegation of ineffective assistance of appellate counsel. Specifically, the defendant argues that postconviction counsel should have amended the *pro se* petition to include a claim of ineffective assistance of appellate counsel for failing to raise on appeal that trial counsel was ineffective for failing to object to comments made by the State during its closing argument at trial. These alleged improper statements occurred when the State asserted that the defendant's expert was biased because the expert's consultation business offered paid medical testimony only for defense clients.

¶ 14 The trial court considered issues raised in the amended petition during the postconviction proceedings, which included argument on whether the defendant made a substantial showing of a constitutional violation regarding trial counsel's failure to object to the alleged errant comments made by the State during closing argument. In fact, the trial court specifically singled out this issue for consideration and invited arguments on this matter from postconviction counsel and the State. After considering the arguments of counsel and the allegations made in the petition (and amended petition), the trial court found there was no substantial showing of a constitutional violation as to trial counsel's failure to object to the State's closing argument remarks. The defendant did not provide any additional evidence of trial counsel's alleged ineffectiveness other than the statements

themselves. Additionally, the trial court found that the comments made by the State were not error "because clearly the credibility of the expert witnesses was a major issue at the trial." As a part of its findings, the trial court went on to explain that if a witness is being paid for their testimony, the credibility of that witness is relevant, and it is expected that the attorneys are going to argue about bias in the closing argument. Therefore, the statements by themselves do not meet the threshold required to demonstrate a substantial showing of a constitutional violation. Where there is no substantial showing of a constitutional violation as to the underlying claim that trial counsel was ineffective, we find that postconviction counsel was not obligated to make an unnecessary amendment to the defendant's petition alleging ineffective assistance of appellate counsel. See *Nesbitt*, 2023 IL App (1st) 211301, ¶ 37. Without addressing the underlying merits of the defendant's claim as to trial counsel's ineffectiveness, we agree with the trial court that the defendant failed to make a substantial showing of a constitutional violation as to trial counsel effectiveness. In addition, we find that the defendant failed to overcome the presumption that arises where postconviction counsel has filed a Rule 651(c) certificate. Therefore, we find that postconviction counsel provided reasonable assistance and complied with Rule 651(c). Ill. S. Ct. R. 651(c) (eff. July 1, 2017).

¶ 15 III. CONCLUSION

¶ 16 The judgment of the trial court denying the defendant's amended postconviction petition at the second stage of postconviction proceedings is affirmed.

¶ 17 Affirmed.