2026 IL 132067

IN THE

SUPREME COURT

OF

THE STATE OF ILLINOIS

(Docket No. 132067)

THE PEOPLE OF THE STATE OF ILLINOIS, Appellee, v.
MELVIN HAMMOND, Appellant.

Opinion filed November 19, 2026.

JUSTICE ROCHFORD delivered the judgment of the court, with opinion.

Justices Overstreet, Holder White, Cunningham, O'Brien, and Tailor concurred in the judgment and opinion.

Chief Justice Neville took no part in the case.

OPINION

¶ 1 Defendant, Melvin Hammond, appeals from the dismissal of his amended petition at the second stage of proceedings under the Post-Conviction Hearing Act (Act). 725 ILCS 5/122-1 *et seq.* (West 2022). Defendant argues postconviction counsel violated Illinois Supreme Court Rule 651(c) (eff. July 1, 2017) by failing

to support defendant's claims with evidence or to certify why supporting evidence was not attached to the amended petition. Defendant concedes that counsel filed a facially valid certificate of compliance under Rule 651(c), but he contends that counsel's failure to attach supporting evidence to the petition or to explain its absence precluded the Cook County circuit court from presuming that counsel made a reasonable, good-faith effort to locate evidence but failed. Defendant's position is that reasonable assistance may not be presumed from a Rule 651(c) certificate where the record lacks any indication, one way or the other, about postconviction counsel's efforts to locate evidence that is missing but necessary for an adequate presentation of the petitioner's contentions. Defendant concludes the cause must be remanded under Illinois Supreme Court Rule 615(b) (eff. Jan. 1, 1967) for further second-stage proceedings where counsel can amend the petition with evidence or explain its unavailability. We disagree.

¶ 2 The appellate court correctly held that postconviction counsel's certification under Rule 651(c) created a rebuttable presumption that he rendered reasonable assistance, including that counsel made a reasonable effort to obtain supporting evidence and was unable to do so. 2025 IL App (1st) 230583-U, ¶¶ 97, 100 (citing *People v. Wallace*, 2016 IL App (1st) 142758, ¶ 27). Furthermore, defendant failed to rebut the presumption by pointing to affirmative evidence in the record to establish that postconviction counsel did not seek out evidence necessary for an adequate presentation of his contentions. Therefore, defendant failed to meet his burden of proving that postconviction counsel rendered unreasonable assistance under Rule 651(c). We affirm the dismissal of his petition.

¶ 3 I. BACKGROUND

¶ 4 A jury found defendant guilty of first degree murder for the beating death of Diamond Shaw, the 13-month-old daughter of his girlfriend, Michele Tate, in Burnham. Defendant's conviction was affirmed on appeal, and he was ultimately sentenced to 75 years' imprisonment. Then defendant, over a 15-year period, filed four *pro se* postconviction petitions, which consist of more than 100 pages of handwritten factual allegations pertaining to claims of ineffective assistance of trial counsel and appellate counsel. A summary of the trial evidence concerning Diamond's cause of death and the timing of her fatal injuries provides context for

defendant's postconviction claims and his assertion that postconviction counsel provided unreasonable assistance in presenting them.

¶ 5 A. The Trial

¶ 6 In September 1995, defendant and Tate were jointly charged with the first degree murder of Diamond. The defense's theory was that, although there was some evidence that defendant struck Diamond on the night of her death, defendant did not intend to kill Diamond or to commit any act that created a strong probability of death or great bodily harm. Defendant claimed Tate inflicted the fatal injuries and that defendant was, at worst, guilty of involuntary manslaughter.

¶ 7 During jury selection, a venireperson informed the circuit court that she worked as the manager of safety and security at a hospital and regularly employed off-duty police officers. She knew Officer Richard Barber, who planned to testify, but she affirmed that she could be fair and impartial. Trial counsel did not object or use a peremptory challenge, and the venireperson served on the jury.

¶ 8 At trial, Burnham police chief J.D. Crull testified that, at about 9 a.m. on September 20, 1995, he was dispatched to defendant's apartment in response to a baby who was not breathing. Diamond was transported to a hospital, where she died less than a half-hour later. Officer Barber went to the hospital and photographed Diamond's injuries.

¶ 9 Chief Crull observed that Diamond had extensive bruises, with black and blue marks from her waist to her knees and under her chest. She also had visible injuries on her face and legs. Chief Crull noticed that Diamond's vagina was swollen and bloody.

¶ 10 At the police station, defendant told Officer Barber that he had been living with Tate and Diamond in his apartment for about five months. Defendant was not Diamond's father. Defendant and Tate would occasionally discipline Diamond. Defendant said that he would "whup" or "spank" Diamond and that Tate would hit her with a belt. Defendant stated he would tie Diamond's hands to the car seat where she usually slept. Defendant was six feet, two inches tall and weighed 175 pounds.

¶ 11 Defendant subsequently gave an assistant state's attorney a more detailed written statement, admitting that he struck Diamond hours before she died. Defendant reported that, when Tate and Diamond moved in, they agreed that Tate would be the one to "whup" Diamond by "hit[ting] Diamond on the legs, arms and butt," which they believed "was a good way to discipline the girl." But after a month and a half, they agreed they would both whup Diamond. Defendant admitted he would whup Diamond about eight times a month by removing her diaper and "hit[ting] her on the butt with [his] hands" for "about two or three minutes" as discipline for crying, taking off her diaper, and jumping off the bed. About a month later, Tate began using a belt to strike Diamond on the legs and bottom. The belt left cuts that would reopen and bleed when defendant struck Diamond with his hand.

¶ 12 According to his written statement, defendant arrived home about 1:30 a.m. on the morning Diamond died. Diamond was sleeping in her car seat in the bedroom. Defendant tried to sleep, but Diamond's crying kept him awake, so he took her out of the car seat, pulled off her diaper, and "whupped her." He thought that, when he returned Diamond to the car seat, she hit her head on the back of the seat. Defendant went back to bed but could hear Diamond "talking and crying and mumbling." Defendant moved the car seat with Diamond to the living room and went back to bed, but Diamond kept him awake.

¶ 13 Tate told defendant she was going to "whup" the baby, and Tate and defendant went into the living room. When defendant took Diamond out of the car seat and put her on the floor, she hit her head. He took off Diamond's diaper and "whupped" her again, then went back to bed and fell asleep. At some point overnight, defendant tied Diamond's wrists to the car seat so she would not scratch her face. When defendant woke up at 8:15 a.m., he noticed something was wrong with Diamond, and Tate called 911.

¶ 14 The prosecution presented evidence that Diamond died from blunt trauma. The emergency room physician observed bruises and swelling on her forehead, scabs and bruises on the back of her scalp, bruising and a deep abrasion on her left cheek, and abrasions on her right cheek and ear. The doctor observed discoloration around Diamond's wrists that indicated they had been bound; substantial bruising to the front of her pelvic area and lower abdomen; swelling and bruising on her left thigh;

scabs and wounds on her buttocks and legs; and bruising, swelling, and a deep abrasion to the external vaginal area and labia. The doctor testified that Diamond's injuries were consistent with being struck by a blunt instrument. The police searched defendant's apartment and found a white sock and a belt with blood matching Diamond's DNA, as well as shoestrings and a car seat cover with blood matching DNA from both Diamond and defendant.

¶ 15 The State initially planned to call Dr. Young Kim, the forensic pathologist who performed the autopsy, to testify to the cause of death. The parties represent that Dr. Kim's report—which does not appear in the record—stated his conclusion that Diamond had sustained a skull fracture, among other injuries. To dispute Dr. Kim's skull-fracture finding, the defense considered presenting the expert testimony of Kim L. Reilly, a Ph.D. candidate in forensic anthropology. Reilly would testify that the lines on Diamond's skull were not a fracture but normal suture lines commonly found on all infants' growing skulls.

¶ 16 Dr. Kim did not testify. Instead, the prosecutors presented the testimony of Dr. Nancy Jones from the Cook County Medical Examiner's Office. Dr. Jones opined that the mark on Diamond's skull was not a skull fracture. As the State's expert did not testify that Diamond suffered a skull fracture, defense counsel decided that Reilly's testimony on that point was unnecessary and did not call her.

¶ 17 Dr. Jones testified that Dr. Kim's autopsy report showed multiple blunt trauma injuries of varying ages and types that were distributed over "basically the entire surface of [Diamond's] body," including her head. Diamond's head exhibited two recent bruises on the right side of her forehead and a laceration near her right ear.

¶ 18 Dr. Jones explained that, as Diamond's brain swelled from the blunt trauma, she lapsed into a coma and the compression of her brain stem eventually stopped her breathing. The swelling also caused diastatic fractures, which differ from skull fractures. Dr. Jones explained that the skulls of babies and children have sutures where the bones grow together and Diamond's swelling brain created intracranial pressure that separated the sutures in her skull. Although Dr. Jones concluded that Diamond had not suffered a skull fracture, she believed that Diamond's injuries were consistent with multiple blows to the head and inconsistent with an infant banging her head against the back of a plastic car seat.

¶ 19 Dr. Jones estimated that Diamond suffered her fatal injuries one to six hours before her death because she suffered minimal "inflammatory reaction," where white blood cells appear in blood and tissue about six hours after an injury. Dr. Jones explained, "Diamond didn't survive long enough for her body to react" by producing more white blood cells.

¶ 20 Defendant's trial testimony differed from his oral and written statements. Defendant accused Tate of abusing Diamond for several weeks before her death and described Tate as an angry, neglectful mother. Defendant testified that, on the day Diamond died, he arrived home at 3 a.m. When Diamond started fussing, he only spanked her "on the butt a little bit" to "soothe and comfort" her. He placed her back in the car seat and went back to bed, where he fell asleep. At some point, he woke up to Tate returning from the bathroom; she said Diamond was still awake. Tate woke defendant around 8 a.m. Defendant thought Diamond was awake because her eyes were "kind of open," but he told Tate to call 911 because something seemed wrong. Defendant denied that he and Tate agreed that hitting Diamond was a good way to discipline her, but he admitted he struck her a few hours before she died and did not see Tate do so.

¶ 21 The jury found defendant guilty of first degree murder. The appellate court affirmed his conviction but ordered a new sentencing hearing, where he received a 75-year prison term.

¶ 22 B. Postconviction Proceedings

¶ 23 Defendant filed four *pro se* postconviction petitions in 2007, 2010, 2013, and 2022 and was represented by a series of appointed attorneys. The petitions asserted ineffective assistance of trial counsel and appellate counsel based on dozens of alleged errors. The most recent *pro se* petition was advanced automatically to the second stage because the circuit court failed to act on the petition within 90 days. See 725 ILCS 5/122-2.1(a), (b) (West 2022).

¶ 24 New postconviction counsel was appointed, and on June 2, 2022, counsel filed the operative petition, which incorporated the four *pro se* petitions by reference and distilled defendant's allegations into 37 claims. Counsel did not attach supporting materials, other than defendant's notarized verification affidavits. However,

counsel filed a Rule 651(c) certificate that affirmed he consulted with defendant and examined the record. The certificate further states, "I have prepared an amended petition for post-conviction relief, which, along with petitioner's previously filed *pro se* petitions for post-conviction relief, adequately set forth the petitioner's claims of deprivation of his constitutional rights."

¶ 25 For purposes of this appeal, defendant argues postconviction counsel failed to adequately present five claims from the amended petition. First, defendant claims that trial counsel was ineffective for failing to use Reilly or another expert to challenge the State's evidence of cause of death and the estimated time of the fatal injuries and that appellate counsel was ineffective for not raising the issue on appeal. Second, he claims trial counsel was ineffective for failing to investigate and interview Dr. Kim, who could have challenged Dr. Jones as to the cause of death and the timing of the fatal injuries. Third, he claims trial counsel was ineffective for failing to file a motion *in limine* to admit letters that Tate sent to defendant while they were in pretrial custody, as well as Chief Crull's police report. Fourth, he claims trial counsel was ineffective for selecting the venireperson who admitted to knowing Officer Barber. Fifth, he claims appellate counsel was ineffective for failing to argue on direct appeal that the trial court erred in not striking the juror.

¶ 26 The State moved to dismiss the amended petition, arguing that the claims were unsupported by either the trial record or affidavit or that they were procedurally barred. Postconviction counsel responded that he had filed an amended petition to consolidate all of defendant's claims into one document and to adopt any previous claims defendant made in the four petitions. Counsel rested on the claims as presented in the *pro se* and amended petitions, noting that defendant had cured any forfeiture concerns by arguing ineffective assistance of appellate counsel. The circuit court dismissed the petition.

¶ 27 On appeal, defendant argued, *inter alia*, that postconviction counsel's representation was inadequate because counsel failed to obtain and attach affidavits, records, or other supporting evidence or to explain their unavailability. Defendant also argued counsel did not shape his ineffectiveness claim into proper legal form by arguing he was prejudiced by his attorneys' performance at trial and on appeal. The appellate court disagreed on both points. The court held that, because counsel certified compliance with Rule 651(c), the court could reasonably

presume that postconviction counsel made a good-faith effort to obtain evidence supporting the claims but was unable to do so. 2025 IL App (1st) 230583-U, ¶ 100. The court also held that, by incorporating the *pro se* petitions by reference, postconviction counsel adequately alleged prejudice under *Strickland v. Washington*, 466 U.S. 668 (1984). The appellate court concluded that postconviction counsel provided reasonable assistance and affirmed the dismissal. Defendant then filed a petition for leave to appeal, which we allowed pursuant to Illinois Supreme Court Rule 315 (eff. Dec. 7, 2023).

¶ 28 II. ANALYSIS

¶ 29 A. Standard of Review

¶ 30 Defendant appeals from the second-stage dismissal of his postconviction petition, arguing that he is entitled to a remand for additional proceedings because counsel provided unreasonable assistance under Rule 651(c). Specifically, defendant contends counsel violated the rule by failing to support his claims with evidence or to explain why evidence was not available. Defendant also claims counsel failed to allege prejudice to shape his ineffective-assistance claims into proper legal form. *De novo* review applies to a circuit court's dismissal of a postconviction petition at the second stage as well as to the interpretation of a supreme court rule. *People v. Addison*, 2023 IL 127119, ¶ 17.

¶ 31 B. Post-Conviction Hearing Act

¶ 32 Under the Act, any person imprisoned in the penitentiary may claim that "in the proceedings which resulted in his or her conviction there was a substantial denial of his or her rights under the Constitution of the United States or of the State of Illinois or both." 725 ILCS 5/122-1(a)(1) (West 2022). The Act provides a three-stage mechanism for a defendant to pursue a collateral attack on the judgment by advancing a postconviction claim. See *People v. Custer*, 2019 IL 123339, ¶ 29.

¶ 33 At the first stage, the circuit court must independently review the petition and shall dismiss it if it "is frivolous or is patently without merit." 725 ILCS 5/122-2.1(a)(2) (West 2022). The petition advances to the second stage if (1) the court

fails to rule on the petition within 90 days, regardless of the petition's merit, or (2) the facts alleged in the petition state an arguable claim of constitutional deprivation. 725 ILCS 5/122-2.1(a), (b) (West 2022); *People v. Urzua*, 2023 IL 127789, ¶ 32. Because the circuit court did not rule on defendant's most recent *pro se* petition within 90 days, it advanced to the second stage, where counsel was appointed. See 725 ILCS 5/122-4 (West 2022); *Urzua*, 2023 IL 127789, ¶ 33.

¶ 34 At the second stage, the State may file a motion to dismiss or an answer to the petition. *Urzua*, 2023 IL 127789, ¶ 34. When ruling on a motion to dismiss, the circuit court must determine whether the petition and accompanying documents make a substantial showing of a constitutional violation. If the petition makes the requisite showing, it is advanced to a third-stage evidentiary hearing; otherwise it is dismissed. *Id.*

¶ 35 An evidentiary hearing will be held only where the petition's allegations are supported by " 'affidavits, records, or other evidence' " or where the petition explains " 'why the same are not attached.' " *People v. Johnson*, 154 Ill. 2d 227, 239-40 (1993) (quoting Ill. Rev. Stat. 1987, ch. 38, ¶ 122-2). The affidavits that accompany a postconviction petition must identify with reasonable certainty the sources, character, and availability of alleged evidence supporting the petitioner's allegations. *Id.* at 240. A petition that is not supported by affidavits or other supporting documents is generally dismissed without an evidentiary hearing unless the allegations stand uncontradicted and are clearly supported by the record. *Id.*

¶ 36 C. Reasonable Assistance of Postconviction Counsel

¶ 37 This appeal provides an opportunity to further delineate what constitutes adequate representation in postconviction proceedings. There is no sixth amendment right to counsel in proceedings under the Act (see U.S. Const., amend. VI); rather, the right to counsel is "a matter of legislative grace." *Custer*, 2019 IL 123339, ¶ 30. A petitioner is entitled to the level of assistance guaranteed by the Act, which is "a standard that is significantly lower than the one mandated at trial by our state and federal constitutions." *Id.* A postconviction petitioner is entitled merely to "reasonable assistance" due to the different roles counsel plays in postconviction proceedings and at trial. *Addison*, 2023 IL 127119, ¶ 19.

¶ 38 While a defendant is presumed innocent prior to trial, a postconviction petitioner has already been stripped of the presumption of innocence. *Id.* Because the petitioner, rather than the State, initiates the postconviction proceeding by claiming that constitutional violations occurred at trial, counsel's role is to "shape their complaints into the proper legal form and to present those complaints to the court" rather than to "protect postconviction petitioners from the prosecutorial forces of the State." *Id.*

¶ 39 To ensure that postconviction petitioners receive reasonable assistance, Rule 651(c) provides:

> "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).

¶ 40 Compliance with Rule 651(c) is mandatory but may be shown by a certificate filed by the petitioner's attorney. *Addison*, 2023 IL 127119, ¶ 21. By filing a Rule 651(c) certificate, postconviction counsel creates a rebuttable presumption of reasonable assistance. *Id.* The defendant bears the burden of overcoming that presumption by showing that postconviction counsel did not substantially comply with the rule. *Id.* The defendant may do so by, *inter alia*, demonstrating that postconviction counsel did not make all necessary amendments to the *pro se* petition. *Id.* Remand is required when postconviction counsel fails to comply with Rule 651(c), regardless of whether the claims in the petition were meritorious. *Id.* ¶¶ 35, 44.

¶ 41 The parties agree that counsel owed a duty to amend defendant's *pro se* petitions to adequately present the claims and that counsel's Rule 651(c) certificate created a rebuttable presumption that he provided reasonable assistance. However, the parties dispute whether defendant rebutted the presumption of reasonable assistance where counsel did not attach supporting evidence to the amended petition and the record—including the certificate—does not indicate the extent to which counsel made reasonable efforts to obtain and present necessary evidence.

¶ 42 Defendant argues the record rebuts the presumption because (1) "[t]he petition shall have attached thereto affidavits, records, or other evidence supporting its allegations or shall state why the same are not attached" (see 725 ILCS 5/122-2 (West 2022)) and (2) counsel must amend the *pro se* petition as necessary for an adequate presentation of the petitioner's contentions (see Ill. S. Ct. R. 651(c) (eff. July 1, 2017)). Defendant reasons that, because a petitioner must explain why supporting evidence was not attached to the petition and postconviction counsel must shape claims into their proper legal form, a record that lacks any indication, one way or the other, about counsel's efforts to locate missing evidence rebuts the presumption of reasonable assistance. Defendant concludes the cause must be remanded under Rule 615(b) for further second-stage proceedings so counsel can amend the petition with necessary evidence or explain its unavailability. Ill. S. Ct. R. 615(b) (eff. Jan. 1, 1967) (the appellate court may remand a cause for a hearing).

¶ 43 The State responds that the Rule 651(c) certificate created a presumption that counsel made a reasonable effort to make any necessary amendments to present defendant's claims—including undertaking a reasonable search for supporting evidence—and defendant failed to rebut the presumption with anything from the record to show that counsel's assistance was unreasonable. We agree with the State that counsel's certification under Rule 651(c) supports the inference that counsel undertook reasonable efforts to locate evidence necessary for an adequate presentation of defendant's contentions. We further agree that defendant failed to cite anything in the record to rebut the presumption of reasonable assistance.

¶ 44 The appellate court soundly relied on *Wallace*, 2016 IL App (1st) 142758, which rejected defendant's position. In *Wallace*, the defendant asserted postconviction counsel failed to examine and attach certain mental health records, and the State responded that counsel's Rule 651(c) certificate created a presumption of reasonable assistance that defendant had failed to rebut. *Id.* ¶ 21. Counsel certified that she had communicated with the defendant, examined the record of the proceedings and other documents in the clerk's file, examined the petition and its attached documents, and concluded that amendment was not necessary. *Id.* ¶ 26. As the certificate's assertions were not contradicted by the record, the Appellate Court, First District, determined there was a rebuttable presumption that postconviction counsel acted reasonably and, to overcome this presumption, the defendant had to demonstrate his attorney's failure to substantially comply with the

duties mandated by Rule 651(c). *Id.* (citing *People v. Perkins*, 229 Ill. 2d 34, 52 (2007)). However, the defendant did not rebut the presumption because he pointed to "no affirmative evidence in the record to establish that postconviction counsel did not seek out and examine all available evidence relevant to his claim." *Id.* ¶ 27.

¶ 45 The defendant asserted that, because counsel's certificate did not say whether she examined his mental health records, it should be presumed that she did not do so. *Id.* The *Wallace* court rejected the assertion as "a reversal of the presumption and corresponding burden in effect in this case. A court may reasonably presume postconviction counsel made a concerted effort to obtain evidence in support of postconviction claims, but was unsuccessful." *Id.* (citing *Johnson*, 154 Ill. 2d at 241). Although the record indicated the mental health records existed, the defendant failed to rebut the presumption of reasonable assistance because "nothing in the record establishe[d] the substance of those medical records." *Id.* "Without any indication of whether those documents would have actually benefitted [the] defendant's claim that he was mentally unfit to plead guilty," the *Wallace* court would not assume that counsel was unreasonable in not attaching them to his petition because the defendant bore the burden to overcome the presumption of postconviction counsel's reasonable performance. *Id.*

¶ 46 As in *Wallace*, postconviction counsel certified that he made all necessary amendments to defendant's amended petition, so the certificate supported the presumption that counsel made a reasonable effort to obtain supporting evidence but could not. Moreover, defendant has not rebutted the presumption. Even if defendant had established the existence of the purportedly necessary evidence, he has not pointed to anything in the record to suggest the evidence would have benefited his claims. Ill. S. Ct. R. 651(c) (eff. July 1, 2017) (record shall contain a showing that the attorney "has made any amendments to the petitions filed *pro se* that are necessary for an adequate presentation of petitioner's contentions"). Defendant does not cite anything in the record to indicate that (1) Reilly or another expert would challenge the State's evidence of cause of death and the estimated time of the fatal injuries, (2) Dr. Kim would have disagreed with Dr. Jones that Diamond suffered a blunt force trauma on the day she died, (3) the letters Tate allegedly sent defendant or Chief Crull's police report would undermine the prosecution's case, (4) the venireperson could not be fair and impartial, and (5) the trial court erred in not striking the juror. Because the record does not indicate how

the evidence cited by defendant would bolster his claims, the evidence was not necessary for an adequate presentation of his contentions.

¶ 47 *Wallace* relied on *Johnson*, where this court also rejected defendant's position. In *Johnson*, postconviction counsel effectively admitted that he failed to comply with Rule 651(c), where he "concede[d] that he made no effort to contact the witnesses specifically identified in the *pro se* petition, or to amend the petition with affidavits of such witnesses." *Johnson*, 154 Ill. 2d at 243. However, the *Johnson* court contrasted counsel's concession with the "ordinary case," where "a trial court ruling upon a motion to dismiss a post-conviction petition which is not supported by affidavits or other documents may reasonably presume that post-conviction counsel made a concerted effort to obtain affidavits in support of the post-conviction claims, but was unable to do so." *Id.* at 241. This appeal is the type of ordinary case that *Johnson* described, where the second-stage dismissal for lack of evidence was proper because the record does not indicate that postconviction counsel failed to make reasonable efforts to locate and present evidence necessary for an adequate presentation of defendant's contentions.

¶ 48 To the extent postconviction counsel does not attach evidence to a petition and the record is silent on the reason for counsel's decision, Rule 651(c) does not require counsel to separately certify the steps taken to find and present evidence that is necessary for an adequate presentation of a petitioner's contentions. Unless the record indicates that the evidence cited by the postconviction petitioner is reasonably available to counsel and necessary for an adequate presentation of the petitioner's contentions, the absence of such evidence from the petition does not rebut the presumption of reasonable assistance created by postconviction counsel's certification of compliance with Rule 651(c). To hold otherwise would reverse the presumption and the corresponding burden that a petitioner bears in demonstrating noncompliance with Rule 651(c).

¶ 49 Defendant asserts that reasonable efforts cannot be presumed from counsel's certification because the record will "very rarely, if ever" indicate why the supporting evidence is unavailable. Defendant contends that, "[r]ather than relying on any sort of off-record speculation of compliance, the test for Rule 651(c) compliance *has* to be based on the record itself." (Emphasis in original.) Defendant misses the point of certification, as the other two components of Rule 651(c) (*i.e.*,

the attorney has consulted with petitioner to ascertain claims of error and has examined the record) also rely on so-called "off-record speculation of compliance," yet certification creates a rebuttable presumption that counsel fulfilled the requirements. *Perkins*, 229 Ill. 2d at 50.

¶ 50 A "certificate" is generally defined as "[a] written assurance, or official representation, that some act has or has not been done, or some event occurred, or some legal formality has been complied with." Black's Law Dictionary 225 (6th ed. 1990). Therefore, when an attorney files a certificate under Rule 651(c), the attorney is officially representing to the court that the duties listed in the certificate have been fulfilled. Here, appointed counsel certified compliance with Rule 651(c), assuring the court that he complied with each of the requirements of that rule, including that the amended petition, along with defendant's previously filed *pro se* petitions for relief, adequately set forth defendant's claims of deprivation of constitutional rights. Although the certificate did not mention whether counsel searched for or possessed supporting evidence, the circuit court could reasonably infer from the certificate that counsel made any amendments and attached all available evidence that was necessary for an adequate presentation of defendant's contentions. *Perkins*, 229 Ill. 2d at 50; *People v. Huff*, 2024 IL 128492, ¶ 24 (when counsel files a Rule 651(c) certificate, "[i]t is presumed from the lack of an amendment that there were none to be made"). Defendant has not pointed to anything in the record to overcome the presumption of reasonable assistance by demonstrating his attorney's failure to substantially comply with Rule 651(c). Thus, defendant is not entitled to a remand for further second-stage proceedings.

¶ 51 Defendant cites *People v. Jackson*, 2021 IL App (1st) 190263, and *People v. Carson*, 2024 IL App (1st) 221644, for the proposition that the presumption of reasonable assistance created by a Rule 651(c) certificate is rebutted when counsel fails to certify why supporting evidence was not attached to an amended petition. In each case, postconviction counsel certified compliance with Rule 651(c), and the petitions were dismissed at the second stage for lack of evidence. But in each case, the appellate court improperly remanded the cause for further second-stage proceedings without finding that counsel had rendered unreasonable assistance.

¶ 52 In *Jackson*, the *pro se* petition alleged trial counsel was ineffective for not introducing the baggy clothing the defendant wore when he was arrested. On appeal

from the second-stage dismissal, the defendant argued the record did not indicate (1) whether there was an arrest photo of him wearing baggy clothes, (2) whether the jail inventoried his clothing, (3) whether the clothing was in storage, or (4) whether trial counsel had access to the clothing. *Jackson*, 2021 IL App (1st) 190263, ¶ 5. The defendant claimed that postconviction counsel rendered unreasonable assistance because the record did not indicate whether she had attempted to obtain the clothing, the jail inventory sheet, or arrest photos. *Id.*

¶ 53 The Appellate Court, First District, vacated the second-stage dismissal, holding "we cannot find that postconviction counsel's assistance was, in fact, unreasonable, if we do not know whether she attempted to obtain these documents and clothes and what facts she found. Defendant is correct that the record before us lacks any indication, one way or the other, about her efforts." *Id.* ¶ 44. Without acknowledging the presumption of reasonable assistance created by counsel's Rule 651(c) certificate or deciding whether counsel acted reasonably, the appellate court invoked Rule 615(b) to remand the cause for further second-stage proceedings for counsel to amend and support the petition. *Id.* ¶ 46.

¶ 54 The *Jackson* court cited *Johnson* for the principle that, once a defendant informs postconviction counsel of specific witnesses who should have been called in his defense, "counsel has an obligation to attempt to contact those witnesses." *Id.* ¶ 44 (citing *Johnson*, 154 Ill. 2d at 247-48). *Jackson*'s reliance on *Johnson* was misplaced. The *Jackson* court conflated counsel's obligation to investigate with Rule 651(c)'s certification requirements. While postconviction counsel must make a reasonable, good-faith effort to seek out supporting evidence when directed by a postconviction petitioner, that duty is separate from whether those efforts can be presumed from the Rule 651(c) certificate.

¶ 55 Rather than acknowledge the rebuttable presumption of reasonable assistance, the *Jackson* court effectively imposed a new certification requirement not found in Rule 651(c). On remand, the appellate court ordered postconviction counsel to file a new Rule 651(c) certificate and directed the circuit court and counsel to indicate on the record what attempts counsel made to determine whether there was a photo of defendant in the clothes he wore when arrested, whether his clothing was inventoried by jail personnel, whether the clothing was in storage, and whether postconviction counsel could determine whether trial counsel had access to the

clothing. *Id.* ¶ 46. The *Jackson* court further directed that the record should clearly reflect postconviction counsel's efforts to obtain the clothing, the jail inventory sheet, and any arrest photos and her efforts to document what was, and was not, available to trial counsel at the time of the suppression hearing and trial. *Id.*

¶ 56 The *Jackson* court's directives run contrary to the text of Rule 651(c), which "requires only that postconviction counsel certify having undertaken the limited actions prescribed" by the rule. *Custer*, 2019 IL 123339, ¶ 38. Thus, the *Jackson* court improperly invoked Rule 615(b) to circumvent Rule 651(c) by disregarding the rebuttable presumption of reasonable assistance. See *People v. Turner*, 2023 IL App (1st) 191503, ¶ 51 (declining to follow *Jackson*); *Addison*, 2023 IL 127119, ¶¶ 33, 35 (noncompliance with Rule 651(c) requires a remand regardless of the petition's merit or prejudice to the petitioner, but the petitioner still must demonstrate counsel did not comply with Rule 651(c)).

¶ 57 In *Carson*, 2024 IL App (1st) 221644, ¶ 4, the *pro se* petition alleged a due process violation, a violation of the one-act, one-crime rule, and ineffective assistance of plea counsel. The circuit court dismissed the petition as untimely, despite the defendant's assertions that the delay was not due to his culpable negligence because he was unfamiliar with the law. *Id.*

¶ 58 On appeal from the second-stage dismissal, the defendant argued counsel's Rule 651(c) certificate failed to raise a rebuttable presumption of compliance because it was unclear whether counsel reviewed portions of the record necessary to adequately present the defendant's claim that he lacked culpable negligence in filing an untimely petition. *Id.* ¶ 15; see *Perkins*, 229 Ill. 2d at 49 (Rule 651(c) requires postconviction counsel to amend an untimely *pro se* petition to allege any available facts necessary to establish that delay was not due to the petitioner's culpable negligence).

¶ 59 The Appellate Court, First District, held that "[w]e cannot ascertain whether counsel discharged his duties under Rule 651(c) because the record is insufficient as to counsel's actions in obtaining any excuse for the delay in filing the postconviction petition." *Carson*, 2024 IL App (1st) 221644, ¶ 20. Following the rationale in *Jackson*, the court concluded that, although postconviction counsel certified that he consulted with the defendant and filed an affidavit detailing excuses for delay, a remand for further second-stage proceedings was necessary

because "the record does not show whether counsel knew about" a previously filed petition for relief from judgment and "the reasons, if any, counsel may not have included the facts surrounding that petition as an excuse." *Id.* ¶¶ 20-22.

¶ 60 *Carson* acknowledged that a postconviction petitioner bears the burden of overcoming the rebuttable presumption of reasonable assistance by demonstrating his attorney's failure to substantially comply with the duties mandated by Rule 651(c). *Id.* ¶ 18. But then the court erred by shifting that burden to the State to demonstrate from the record that counsel satisfied Rule 651(c). *Id.* ¶ 22. We hereby overrule *Jackson* and *Carson* to the extent they are inconsistent with our decision in this case.

¶ 61 Defendant also argues that, because postconviction counsel had an ethical obligation to not advance frivolous or spurious claims (see *People v. Greer*, 212 Ill. 2d 192, 209 (2004)), he was obliged to omit the claims altogether if they lacked evidentiary support. We disagree.

¶ 62 If an amendment would only further a claim that "is frivolous or is patently without merit," the amendment is not "necessary" within the meaning of Rule 651(c). *Id.* at 205. Thus, when a postconviction petition is advanced to the second stage without an adjudication of its merit and then postconviction counsel, while fulfilling the responsibilities of Rule 651(c), discovers something that would ethically prevent him or her from presenting the petitioner's claims, counsel may move to withdraw (*id.* at 209), but counsel "should make some effort to explain *why* defendant's claims are frivolous or patently without merit" (emphasis in original) (*id.* at 212).

¶ 63 Defendant argues that postconviction counsel's decision to present the amended petition without supporting evidence cannot be reconciled with his duty to withdraw frivolous claims. Defendant's theory is that, by including the claims, counsel was implying to the circuit court that they had at least some merit, without providing anything of substance to support them. However, *Greer* requires postconviction counsel to withdraw claims only if counsel knows they are frivolous (*id.* at 209), not where the claims have at least an arguable basis in law or in fact and the record shows the arguments counsel raised were simply the best options available under the circumstances. See *People v. Williams*, 2025 IL 129718, ¶ 49 (counsel, by presenting best available argument to advance a nonfrivolous claim,

did not render unreasonable assistance even if the arguments were not particularly compelling and were ultimately unsuccessful); see also *Huff*, 2024 IL 128492, ¶ 30 (postconviction counsel, who was appointed without a first-stage ruling by the circuit court, has no duty to withdraw when the *pro se* petition posits a weak legal claim that is presented in the best possible legal form and there is no indication that counsel knew the claim was frivolous). Requiring postconviction counsel to explain why supporting evidence is unavailable could undermine a nonfrivolous claim, thereby denying the petitioner proper representation when presenting claims of constitutional deprivation under the Act. See *Perkins*, 229 Ill. 2d at 51; *People v. Downs*, 2017 IL App (2d) 121156-C, ¶ 50 (postconviction counsel's obligation to represent the defendant requires him or her to present any nonfrivolous claim to the trial court even where there remains a possibility or even likelihood that the defendant will not prevail on the claim).

¶ 64 Here, the Rule 651(c) certificate allowed the circuit court to presume that counsel did not present additional evidence because it would not bolster the claims or did not exist, not because the claims were frivolous and patently without merit. See *Custer*, 2019 IL 123339, ¶ 38 (Rule 651(c) requirements "do not include bolstering every claim presented in a petitioner's *pro se* postconviction petition, regardless of its legal merit, or presenting each and every witness or shred of evidence the petitioner believes could potentially support his position"); see also *People v. Agee*, 2023 IL 128413, ¶ 55 (postconviction claims, filed with the assistance of counsel, need not " 'make the petition's allegations factually sufficient to require the granting of relief' " (quoting *People v. Stovall*, 47 Ill. 2d 42, 46 (1970))).

¶ 65 Finally, defendant argues postconviction counsel inadequately presented his claims of ineffective assistance by failing to allege that he was prejudiced by the acts and omissions of trial counsel and appellate counsel. We agree with the State that amendment was not necessary to allege *Strickland* prejudice because petitioner's ineffective-assistance claims were presented in proper legal form. The amended petition incorporated petitioner's factual allegations from his *pro se* filings, including the petition filed in 2013 that added factual allegations concerning how trial counsel's conduct affected the outcome of his trial or sentencing. And the amended petition alleged appellate counsel was ineffective for failing to allege trial counsel's ineffectiveness. By incorporating the *pro se* petitions' factual allegations

supporting a claim of ineffective assistance of trial counsel and appellate counsel, the amended petition filed by postconviction counsel shaped defendant's allegations of constitutional violations into the proper legal form. See *Addison*, 2023 IL 127119, ¶ 19.

¶ 66 III. CONCLUSION

¶ 67 We hold that postconviction counsel's certification of compliance with Rule 651(c) created a rebuttable presumption that he rendered reasonable assistance, including that counsel made a reasonable, good-faith effort to obtain and present evidence that was necessary for an adequate presentation of defendant's contentions and was unable to do so. Furthermore, defendant has failed to point to affirmative evidence in the record to rebut the presumption.

¶ 68 Judgments affirmed.

¶ 69 CHIEF JUSTICE NEVILLE took no part in the consideration or decision of this case.