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).

2026 IL App (4th) 251137-U

NO. 4-25-1137

IN THE APPELLATE COURT

OF ILLINOIS

FOURTH DISTRICT

FILED
November 23, 2026
Carla Bender
4th District Appellate
Court, IL

THE PEOPLE OF THE STATE OF ILLINOIS,	)	Appeal from the
Plaintiff-Appellee,	)	Circuit Court of
v.	)	Peoria County
DEANGELO GULLEY,	)	No. 13CF915
Defendant-Appellant.	)	
	)	Honorable
	)	Stephen A. Kouri,
	)	Judge Presiding.

JUSTICE VANCIL delivered the judgment of the court.
Justices DeArmond and Harris concurred in the judgment.

ORDER

¶ 1 *Held*: The appellate court reversed the dismissal of defendant's postconviction petition and remanded the matter for further second-stage proceedings in compliance with Illinois Supreme Court Rule 651(c) (eff. July 1, 2017).

¶ 2 In January 2014, following a jury trial, defendant, DeAngelo Gulley, was convicted of one count of armed robbery with a firearm (720 ILCS 5/18-2(a)(2) (West 2012)) and two counts of home invasion (*id.* § 19-6(a)(2), (3)). His convictions were later affirmed by the Appellate Court, Third District. See *People v. Gulley*, 2017 IL App (3d) 140407-U, ¶ 46. He filed a postconviction petition, in which he raised several allegations of ineffective assistance of trial counsel and appellate counsel. The trial court dismissed all but one of his claims at a second-stage hearing on the petition. Following a third-stage evidentiary hearing, the court dismissed defendant's remaining claim that his trial counsel was ineffective for disregarding his request for a bench trial.

¶ 3 Defendant appeals, arguing (1) he is entitled to a new trial because he established at the third-stage evidentiary hearing that he was denied the effective assistance of trial counsel, and in the alternative, (2) postconviction counsel failed to comply with Illinois Supreme Court Rule 651(c) (eff. July 1, 2017). We agree with defendant's contention that the record fails to demonstrate postconviction counsel complied with Rule 651(c). We reverse the denial of defendant's postconviction petition and remand for further postconviction proceedings.

¶ 4 I. BACKGROUND

¶ 5 The underlying facts of this case have been clearly set forth in defendant's prior appeal. See *Gulley*, 2017 IL App (3d) 140407-U. Accordingly, we set forth only the facts necessary for disposition of this appeal.

¶ 6 In September 2013, defendant was charged with two counts of armed robbery with a firearm (720 ILCS 5/18-2(a)(2) (West 2012)) and two counts of home invasion (*id.* § 19-6(a)(2), (3)). Prior to trial, one of the armed robbery counts was nol-prossed.

¶ 7 In January 2014, following a jury trial, defendant was found guilty on all three counts. Defendant was sentenced to concurrent terms of 36 years' imprisonment for armed robbery and 24 years' imprisonment for home invasion. On direct appeal, the Third District affirmed defendant's convictions and sentences. See *Gulley*, 2017 IL App (3d) 140407-U, ¶ 46.

¶ 8 In March 2018, defendant filed a *pro se* petition pursuant to the Post-Conviction Hearing Act (Act) (725 ILCS 5/122-1 *et seq.* (West 2018)). The petition alleged trial counsel was ineffective where she (1) disregarded defendant's request for a bench trial, (2) failed to prepare him to testify, (3) failed to file a motion to suppress his arrest and identification, and (4) caused delays impacting his speedy-trial right. The petition also alleged appellate counsel was ineffective for failing to challenge his sentence's 15-year firearm enhancement. Defendant

attached a sworn affidavit to his petition, asserting that he told trial counsel he wanted a bench trial, but counsel told him he "had to take a jury trial." Based on his affidavit, defendant's petition argued he was "denied ineffective assistance of trial counsel" where counsel "disregarded and overrode his desire for a bench trial."

¶ 9 In June 2018, the trial court advanced defendant's postconviction petition to the second stage, and counsel was appointed. We note that no amended petition or Rule 651(c) certificate was filed before initial counsel withdrew in March 2019. After initial counsel withdrew, public defender Maggi Wettstein was appointed as counsel.

¶ 10 In December 2019, Wettstein filed a supplemental petition for postconviction relief. The supplemental petition "incorporate[d] by reference all of the arguments set forth" in defendant's *pro se* petition and included two pages that were "inadvertently" omitted by defendant. The petition concluded, "[f]or the reasons set forth" in his *pro se* petition, defendant was denied effective assistance of counsel under *Strickland v. Washington*, 466 U.S. 668 (1984). No Rule 651(c) certificate was filed with the supplemental petition.

¶ 11 In July 2020, the State filed a motion to dismiss defendant's petition.

¶ 12 In September 2020, the trial court allowed defendant's motion to substitute the judge, ensuring defendant's trial judge would not preside over his postconviction proceedings. The case was ultimately reassigned to Judge Stephen A. Kouri.

¶ 13 In July 2021, Wettstein filed a response to the State's motion to dismiss the petition. The response argued, *inter alia*, that defendant was entitled to a third-stage evidentiary hearing on his bench trial claim where his allegations were "not contradicted by the record." No Rule 651(c) certificate was filed with the response.

¶ 14 In December 2021, the trial court issued a written order granting the State's

motion to dismiss "with respect to all of [defendant's] claims except the Bench Trial claim, which will proceed to evidentiary hearing."

¶ 15 On April 11, 2025, after several continuances, the case proceeded to a third-stage evidentiary hearing. At the hearing, defendant was represented by new counsel, Bryan McIntyre, who acknowledged that "in 2021 [defendant's petition] was advanced to stage [three] on a single issue." No Rule 651(c) certificate was filed by McIntyre.

¶ 16 On direct examination, defendant testified that he was represented by Public Defender Colette Bailey in his trial proceedings. We note from the record that Bailey died in 2014, after defendant's trial. Defendant recalled he spoke to trial counsel "the day before [he] went to trial," and counsel also visited the jail to show him videos of witnesses. Defendant was asked by McIntyre about the decision to proceed to a jury trial, and the following colloquy occurred:

> "Q. *** Before setting the case for trial, did you discuss with Ms. Bailey whether to have a jury trial or a bench trial?
>
> A. Yeah. I told her I wanted a bench trial.
>
> Q. Do you remember what her response was?
>
> A. She told me, 'We're not going with a bench trial. We're doing a jury trial.'
>
> Q. All right. Did she—did you have any further discussion about that?
>
> A. No. Being the fact that she was the representation of me, I felt as if she knew best with the situation, but she ain't never explained to me what my rights were and things of that nature.
>
> * * *

Q. Were you ever informed that it was your decision and your decision alone whether to go to a jury trial or a bench trial?

A, No.

* * *

Q. *** If you had the choice, yourself, on the date of trial or when it was set for trial, would you have chosen a bench trial or a jury trial?

A. I would have chosen a bench trial.

Q. And, in fact, you told your attorney that; is that right?

A. Yeah.

Q. And your attorney told you that it was not your decision?

A. Basically, in so many words, yeah."

The trial court later asked defendant why he wanted a bench trial. Defendant stated he did not want to put his life in the hands of "12 people" who "did not know the law," and he "knew the judge had to find [him] guilty beyond a reasonable doubt, and *** guilty based on the law." Defendant stated he was found innocent by a jury in a prior case, and the court asked why he "would *** want a bench trial in this second case." Defendant responded that the cases were "different." Defendant insisted that he "would have [chosen] a bench trial" in the first case, but his "rights were never explained" to him in either case.

¶ 17 After defendant's testimony, no further evidence was presented, and the trial court heard arguments from the parties. The State argued against defendant's testimony as "simply unbelievable," where it was unlikely that defendant "told [counsel] that he wanted a bench trial and she just said no." In response, McIntyre argued "the record definitely [did] not show" that counsel or the court "informed [defendant] that it was [his] decision" whether to have a bench

trial. McIntyre argued defendant's "constitutional right was taken away from him by counsel." The court took the matter under advisement.

¶ 18 On April 29, 2025, while the matter was under advisement, the trial court issued a written order, inviting the parties to "submit a written response to the applicability or non-applicability of *People v. Townsend*, 2020 IL App (1st) 171024 to the instant case" by July 11, 2025. The record does not contain any response by either party to the court's inquiry.

¶ 19 On October 20, 2025, the trial court issued the following written order, granting the State's motion to dismiss defendant's postconviction petition:

> "The Court has considered the pleadings and arguments of the attorneys. The Defendant failed to raise the issue of jury trial waiver despite having a different trial and post-trial attorney than the attorney who purportedly waived the Defendant's right to a [bench] trial without Defendant's consent. The claim is therefore waived or possibly fabricated. Either way, this Court grants the State's Motion to Dismiss Defendant's Post-Conviction Petition."

¶ 20 This appeal followed.

¶ 21 II. ANALYSIS

¶ 22 On appeal, defendant argues (1) he is entitled to a new trial because he established at the third-stage evidentiary hearing that he was denied the effective assistance of trial counsel and (2) postconviction counsel failed to comply with Rule 651(c). We agree with defendant's contention that the record fails to demonstrate postconviction counsel complied with Rule 651(c). We reverse and remand for new second-stage proceedings consistent with our decision.

¶ 23 The Act allows a criminal defendant "to challenge a conviction by alleging it was the result of a substantial denial of federal or state constitutional rights, or both." *People v. Cotto,*

2016 IL 119006, ¶ 26. There is a three-stage process to postconviction proceedings under the Act. *Id.* At the first stage, the trial court determines whether the petition is "frivolous or is patently without merit." (Internal quotation marks omitted.) *Id.* If the petition is not dismissed at the first stage, it advances to the second stage. *Id.*

¶ 24 "The second stage of postconviction review tests the legal sufficiency of the petition." *People v. Domagala*, 2013 IL 113688, ¶ 35. During this stage, "counsel may be appointed to an indigent defendant and the State may file a motion to dismiss or an answer to the petition." *Id.* ¶ 33. The court must determine whether the allegations in the petition, taken as true, and any accompanying documentation make a substantial showing of a constitutional violation. *Id.* If the petition is not dismissed during the second stage, it advances to a third-stage evidentiary hearing. *Id.* ¶ 34.

¶ 25 At the third-stage evidentiary hearing, the trial court "serves as the fact finder, and, therefore, it is the court's function to determine witness credibility, decide the weight to be given testimony and evidence, and resolve any evidentiary conflicts." *Id.* "[T]he burden of proof is upon the petitioner to show a denial of [a] constitutional right by a preponderance of the evidence." (Internal quotation marks omitted.) *People v. Coleman*, 2013 IL 113307, ¶ 92. "When a petition is advanced to a third-stage, evidentiary hearing, where fact-finding and credibility determinations are involved, we will not reverse a circuit court's decision unless it is manifestly erroneous." *People v. Pendleton*, 223 Ill. 2d 458, 473 (2006).

¶ 26 As an initial matter, the parties dispute whether the trial court made proper factual and credibility findings for this court to affirm the third-stage denial of postconviction relief. We will not reach this dispute because remand is otherwise required for further postconviction proceedings in compliance with Rule 651(c). Further, we will not reach defendant's argument

that he is entitled to a new trial based on the evidence at the third-stage hearing. Defendant does not argue that the court's ruling was manifestly erroneous. See *People v. Harris*, 2025 IL 130351, ¶ 44 (noting a reviewing court may "find that the [trial] court's ruling was manifestly erroneous, necessitating the vacatur of the convictions and a remand for a new trial").

¶ 27 When a third-stage evidentiary hearing involves questions of law, we review such findings *de novo*. *People v. English*, 2013 IL 112890, ¶ 23. To the extent that the trial court found that defendant's claim was procedurally forfeited, we reject this finding. See *People v. Munson*, 206 Ill. 2d 104, 124 (2002) (noting forfeiture does not foreclose a defendant from raising a postconviction claim based on matters outside the record); *Townsend*, 2020 IL App (1st) 171024, ¶¶ 19-20 (concluding where relevant facts were outside the record, defendant's claim of trial counsel "usurping his decision to waive a jury trial" was not forfeited).

¶ 28 A. Rule 651(c)

¶ 29 A defendant is entitled to a reasonable level of assistance at both the second and third stages of postconviction proceedings. *People v. Johnson*, 2018 IL 122227, ¶ 16. "The purpose of Rule 651(c) is to ensure that postconviction counsel shapes the defendant's claims into a proper legal form and presents them to the court." (Internal quotation marks omitted.) *People v. Landa*, 2020 IL App (1st) 170851, ¶ 45. Rule 651(c) provides, in relevant part:

> "The record *** 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).

¶ 30 "The filing of a facially valid Rule 651(c) certificate creates a rebuttable presumption that counsel acted reasonably and complied with the rule." (Internal quotation marks omitted.) *People v. Beasley*, 2017 IL App (4th) 150291, ¶ 39. "In the absence of such a certificate, a clear and affirmative showing of compliance on the record must be present." (Internal quotation marks omitted.) *People v. Smith*, 2016 IL App (4th) 140085, ¶ 33. Where counsel fails to fulfill the duties of Rule 651(c), remand is required, "regardless of whether the claims raised in the [postconviction] petition had merit." *People v. Suarez*, 224 Ill. 2d 37, 47 (2007). Whether counsel substantially complied with Rule 651(c) is reviewed *de novo*. *People v. Mason*, 2016 IL App (4th) 140517, ¶ 19.

¶ 31 B. This Case

¶ 32 Here, the record establishes that no Rule 651(c) certificate was filed by any postconviction attorney in the proceedings below. Without a certificate, there is no presumption that counsel consulted with defendant, reviewed the record, and made necessary amendments. See *Suarez*, 224 Ill. 2d at 47-52. In particular, postconviction counsel Wettstein failed to file a certificate of compliance pursuant to Rule 651(c). The record must otherwise affirmatively demonstrate that counsel performed these duties. *Id.*

¶ 33 Defendant argues the record does not affirmatively show that postconviction counsel complied with Rule 651(c). We agree. Based on our review, there is no record that any postconviction attorney reviewed the trial transcripts. Our supreme court has established that the failure to complete any of the duties outlined in Rule 651(c) is grounds for remand. *People v. Addison*, 2023 IL 127119, ¶¶ 33-36; see *People v. Brown*, 52 Ill. 2d 227, 230-31 (1972) (remanding for compliance where the record did not show that postconviction counsel examined

the trial record); *Suarez*, 224 Ill. 2d 37 at 52 (remanding for compliance where the record did not show that postconviction counsel consulted with the defendant).

¶ 34 We reject the State's unsupported inference that Wettstein consulted with defendant before she attached missing pages from his *pro se* petition to the supplemental petition. In *Suarez*, our supreme court rejected the argument that "a presumption of consultation should arise from the mere amendment of a *pro se* petition" or "the filing of a supplemental petition." *Suarez*, 224 Ill. 2d 37 at 44. We note that the State's brief provides no other support for the assertion that Wettstein examined the trial record, as required by Rule 651(c). See *Brown*, 52 Ill. 2d at 230. Indeed, "we have no statements on the record from postconviction counsel clarifying whether [she] spoke with defendant about his claims of constitutional deprivation or reviewed the necessary records." *Mason*, 2016 IL App (4th) 140517, ¶ 25.

¶ 35 Further, postconviction counsel was obligated by Rule 651(c) to "shape defendant's claims into their proper [legal] form." *Addison*, 2023 IL 127119, ¶ 27. Here, Wettstein adopted the *pro se* petition in its entirety, including a firearm-enhancement claim rebutted by the record, without repleading specific claims. We agree with defendant that counsel did not fulfill her duty to reshape the viable claims of the *pro se* petition and make necessary amendments.

¶ 36 The State argues that counsel "successfully advocated for defendant's core claim" at the second stage, and it was advanced to a third-stage evidentiary hearing. We remind the State that successful advocacy does not relieve postconviction counsel of his or her obligations under Rule 651(c). See *Id.* ¶ 33. Here, the record shows postconviction counsel failed to fulfill her Rule 651(c) duties, and remand for compliance with the rule is required.

¶ 37 Because we reverse and remand the cause for further proceedings based on

counsel's failure to comply with the requirements of Rule 651(c), we need not reach defendant's other contentions on appeal.

¶ 38 III. CONCLUSION

¶ 39 For the reasons stated, we reverse the trial court's judgment and remand for further second-stage proceedings under the Act.

¶ 40 Reversed and remanded.