

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).

IN THE
APPELLATE COURT OF ILLINOIS
FIRST DISTRICT

THE PEOPLE OF THE STATE OF ILLINOIS,	)	
	)	Appeal from the Circuit Court
Plaintiff-Appellee,	)	of Cook County.
	)	
v.	)	No. 11 CR 0783301
	)	
ANTOINE BARNES,	)	The Honorable
	)	Carl B. Boyd,
Defendant-Appellant.	)	Judge Presiding.
	)	

JUSTICE REYES delivered the judgment of the court.
Justices McBride and Van Tine concurred in the judgment.

ORDER

¶ 1 *Held:* The circuit court's second-stage dismissal of defendant's postconviction petition is affirmed, where defendant's postconviction counsel provided reasonable assistance in substantial compliance with Illinois Supreme Court Rule 651(c) (eff. July 1, 2017).

¶ 2 Following a jury trial, defendant Antoine Barnes was found guilty of aggravated battery with a firearm (720 ILCS 5/12-3.05(e)(1) (West 2012)) and aggravated battery on a public way (*id.* § 12-3.05(c)) and sentenced to respective concurrent terms of 20 and 5 years'

imprisonment. Defendant's convictions were upheld on direct appeal. *People v. Barnes*, 2016 IL App (1st) 140512-U.

¶ 3 Defendant then sought relief under the Post-Conviction Hearing Act (Act) (725 ILCS 5/122-1 *et seq.* (West 2022)). Defendant now appeals the circuit court's second-stage dismissal of his ineffective assistance of counsel claims, contending that his postconviction counsel failed to amend the *pro se* postconviction petition, which defendant alleges constitutes unreasonable assistance of counsel and represents a violation of Illinois Supreme Court Rule 651(c) (eff. July 1, 2017). For the reasons set forth below, we affirm the circuit court's ruling.

¶ 4 BACKGROUND

¶ 5 As we previously provided a more complete factual history in defendant's direct appeal (see *Barnes*, 2016 IL App (1st) 140512-U, ¶¶ 2-16), we now include only those facts necessary for an understanding of the issues currently before us.

¶ 6 *Jury Trial*

¶ 7 Defendant was charged following the April 14, 2011, shooting of Darrius McDaniel (McDaniel) and beating of Brandon Martin (Martin) with 6 counts of attempted first-degree murder (720 ILCS 5/8-4(a) (West 2010)), 1 count of being an armed habitual criminal (*id.* § 24-1.7(a)), 1 count of aggravated battery with a firearm (*id.* §12-4.2(a)(1)), 1 count of aggravated discharge of a firearm (*id.* § 24-1.2(a)(2)), 1 count of unlawful use or possession of a weapon by a felon (*id.* § 24-1.1(a)), and 11 counts of aggravated battery (*id.* § 12-4), including 4 counts of aggravated battery on a public way (*id.* § 12-4(b)(8)). The State proceeded on one count of attempted first-degree murder, one count of being an armed habitual criminal, one count of aggravated battery with a firearm, and one count of aggravated battery on a public

way. The armed habitual criminal count was severed before trial, as defense counsel argued that it was unduly prejudicial to defendant.

¶ 8 A jury trial commenced in the circuit court of Cook County on November 20, 2013. In the defense’s opening statement, trial counsel argued that the beating victim, Martin, was not in a position to adequately view or identify his assailant or McDaniel’s shooter, as he was first standing at a distance, later turned to run away, and thereafter covered his face and head while the assailants beat him and eventually fled.

¶ 9 As a witness for the State, Martin testified that he was currently in Illinois Department of Corrections (IDOC) custody after pleading guilty to burglary. Martin testified that he was at the apartment residence of his “play cousin,” McDaniel, in Matteson, Illinois, at approximately 10:30 a.m. on April 14, 2011. McDaniel and his girlfriend left the apartment, and Martin went out to the front porch to smoke a cigarette. Martin then observed two men walk out of an apartment building across the street and approach the couple. Martin made an in-court identification of defendant as one of the men he observed, and identified the other man as Ronald Robinson (Robinson). When Martin observed the two men approaching his “people,” Martin testified that he “thought he [defendant] was fitting to get down” and ran across the street towards McDaniel. Martin observed one of the men with a firearm in his hand, whom he identified as defendant. The men then instructed Martin and McDaniel not to move, but Martin and McDaniel instinctively ran off in opposite directions. Martin testified that it was then that he heard two shots fired as McDaniel was hit. Martin testified that he tripped on a pothole as he was running and fell to the ground, after which the two men began beating him. Martin testified that defendant struck him with the firearm, while Robinson hit and kicked him in the head. Martin testified that this went on for approximately three minutes. Martin

acknowledged that he kept his face and head covered during the attack, but also testified that he had observed defendant hitting him with the firearm. Martin then observed the two men flee in the direction of the apartment building from which they had emerged.

¶ 10 On cross-examination, Martin testified that Robinson had approached him first after he fell over the pothole. Martin testified that he kept his head and face covered while the other individual approached and remained in that protective position until the beating ended and he was certain that the two men were gone. Martin testified that he had picked defendant out of a police station lineup on April 16, 2011 (two days after the events transpired), but he had only stated to a detective at that time that defendant “resembled” the gunman—he had not expressed positively that the individual in the lineup was defendant.

¶ 11 On redirect examination, Martin testified that he had a clear and unobstructed view from his apartment building of the two men before he joined McDaniel and his girlfriend in the street. Martin testified that he observed the firearm in defendant’s hand when he was “right next to him,” and that he was able to observe defendant striking him with the firearm when he was on the ground, even while he was in a protective face-covering position. When defense counsel asked if Martin had any doubt as to whether defendant was the one holding the firearm and the one accompanying Robinson that day, Martin answered affirmatively. On recross examination, Martin confirmed that he had informed the detective on April 16 that defendant resembled the gunman, but that he was uncertain. Martin also confirmed that as he watched the two individuals run away after they stopped beating him, he only had visibility of their backs.

¶ 12 The State called McDaniel as its next witness. McDaniel testified that after leaving his apartment on April 14, he heard Robinson yelling out of a window. McDaniel testified that

Robinson emerged from the apartment building across the street a few minutes later, alongside a male whose description McDaniel provided. McDaniel did not identify defendant as the second individual, either at trial or in a pretrial identification.¹ In his testimony at trial, McDaniel recalled that the second individual had been wearing what appeared to be a leather jacket layered on top of a hoodie sweatshirt. Martin identified the jacket in a photograph admitted as the State's exhibit No. 4. McDaniel testified that when he noticed the two men following him and his girlfriend, he turned around to face them and said, "What's up." At that point, McDaniel motioned to Martin, who was still on the porch of his apartment. The man with the jacket then pulled out a firearm, pointed it at McDaniel's chest, instructed him not to move, and then pointed the firearm downwards at McDaniel's leg. As McDaniel moved backwards, the man shot him in the leg. McDaniel testified that he was within approximately 10 feet of the man when he was shot and that he was facing him. McDaniel testified that he then ran towards the nearby McDonald's restaurant, turning back "[s]omewhat" while he ran. That is when, McDaniel testified, he observed Martin "getting jumped" by Robinson and the man in the leather jacket.

¶ 13

The State also called Lamonica Chambers (Chambers), a witness who lived on the same apartment floor as Robinson, who she testified had come to her door shortly after 10:30 a.m. on April 14. Chambers testified that Robinson was accompanied that morning by defendant, whom she identified in court. Chambers testified that police squad vehicles were outside the building at that time. She testified that Robinson attempted to convince her to take a firearm from him, which she refused. Chambers's brother, Antwon Johnson (Johnson), also testified

¹ Prior to trial, defendant had filed a motion *in limine* to bar McDaniel's in-court identification of defendant, to which the State agreed.

and identified defendant in court. Johnson testified that he was taking out the family's garbage at the time that Robinson and defendant arrived at their door. Both Chambers and Johnson described defendant as Robinson's cousin. Johnson described defendant as wearing a black leather jacket, which he identified in the State's exhibit No. 4. Johnson also testified that he observed a red Toyota Camry in the building's parking lot when he went to take the garbage out that morning, and that he had observed defendant driving that vehicle on previous occasions. He identified a photograph of the vehicle admitted as State's exhibit No. 5.

¶ 14 Tineshia Satchell (Satchell), defendant's girlfriend at the time of the events which gave rise to this case, then testified for the State. She identified defendant in court and testified that she drove a red Toyota Camry which she identified in State's exhibit No. 5. Satchell testified that at 1 a.m. on April 15, she was at home in her apartment with defendant and her children when the police entered, detained defendant, and returned to search the premises. In the course of that search, the police seized a leather jacket which she testified that she knew was in her apartment and did not belong to her but could not recall if it belonged to defendant.

¶ 15 The State's last witness was Deputy Chief Michael Jones (Jones), the sergeant in charge of investigations at the time with the Matteson Police Department. Jones testified that his team identified Robinson first, and then located defendant by learning from witnesses of his association with a vehicle, and tracking the location of that vehicle. Conducting a search of the apartment to which Satchell consented, Jones testified that he and his team recovered a black leather jacket matching the description of what defendant was reported to be wearing the day of the shooting, and a .38-caliber revolver handgun in the toilet basin of the apartment bathroom. Jones identified these objects as depicted in the State's exhibits Nos. 4 and 2, respectively. The red Toyota Camry, which Jones identified in the State's exhibit no. 5, was

parked outside the apartment building at the time of the arrest. Jones testified that the firearm could not be tested for fingerprints due to the condition it was in after being submerged in water. Furthermore, Jones testified on cross-examination that the firearm could not be tested to prove that it was the one defendant used to shoot McDaniel as there was no bullet recovered and therefore nothing with which to compare it. Jones acknowledged that no gunshot residue tests had been performed on defendant nor the leather jacket after it was recovered. On redirect examination, Jones testified that gunshot residue might not have been detectable on defendant's hands at the time as approximately 14 to 15 hours had passed since the shooting transpired.

¶ 16 The State's closing argument emphasized the physical proximity of the victims to their assailants at the time of the incident. Defense counsel, Assistant Public Defender Renee Norris (Norris), by contrast, argued, "I don't think any of these young people who testified here yesterday were very credible starting with Mr. Brandon Martin." Norris underscored the fact that Martin had covered his face throughout the attack, obscuring his vision of his assailants and causing him to express uncertainty while making a lineup identification of defendant two days later.

¶ 17 The jury delivered a verdict of not guilty of attempted first-degree murder and guilty of aggravated battery with a firearm and aggravated battery on a public way. Defendant moved for a new trial, which was heard on the same date as the sentencing hearing. The motion for a new trial was denied, and defendant was sentenced to concurrent terms of 20 and 5 years' imprisonment. A motion to reconsider the sentence was denied.

¶ 18

Direct Appeal

¶ 19

On direct appeal, defendant challenged the sufficiency of the evidence for conviction, arguing that there was no physical evidence that established that he fired a weapon, and that the State’s only identification witness to the crime itself, Martin, had provided a “vague and doubtful” identification. *Barnes*, 2016 IL App (1st) 140512-U, ¶ 17. Defendant also argued that the firearm recovered at his girlfriend’s apartment did not match the victim’s description of the weapon used. *Id.* Assessing the identification testimony with the five-factor test from *Neil v. Biggers*, 409 U.S. 188, 199-200 (1972), our court held that Martin’s clear view from the apartment building, his proximity to the defendant during the attack, the attack’s occurrence in broad daylight, Martin’s degree of attention during the attack, and the short lapse of time between the crime and the police lineup demonstrated reliability despite the lack of certainty present in Martin’s initial identification. *Barnes*, 2016 IL App (1st) 140512-U, ¶¶ 19-26. With further corroboration from the State’s other witnesses and circumstantial evidence—including consistent descriptions of defendant’s clothing, the type of firearm used, and the vehicle associated with defendant—we held that this evidence supported defendants’ convictions when viewed in the light most favorable to the State, and affirmed the circuit court’s judgment. *Id.* ¶¶ 27-29, 35. A subsequent petition for leave to appeal to the Illinois Supreme Court was denied. *People v. Barnes*, No. 120573 (Ill. May 25, 2016).

¶ 20

Postconviction Proceedings

Defendant filed a *pro se* postconviction petition on July 22, 2016, alleging that he was denied his due process and equal protection rights, as well as freedom from unreasonable searches and seizures and the right to confront witnesses in the proceedings that led to his conviction. Defendant cited the fourth and fourteenth amendments to the United States

Constitution (U.S. Const., amend. IV, XIV) and sections 6 through 8 of article I of the Illinois Constitution (Ill. Const. 1970, art. I, §§ 6-8), alleging ineffective assistance of both his trial and direct appeal counsel. Specifically, defendant focused on the deficiency of Martin's lineup identification, which he argued that his trial counsel should have moved to suppress. Defendant wrote:

"[T]he State places its reliance on Brandon Martin's in-court identification. *** At the time [defendant] was being contained [sic] [on burglary charges] *** Assitant [sic] Public Defender Ms.Renee Norris was aware but still made arrangements for [defendant] and Mr.martin to appear in court on several court dates coincide bull pins [sic] in front of Judge Zelezinski, G.Frank room 108. Brandon Martin viewed [defendant] on several occasions prior to trial without [defendant's] acknowledgement. This is where his in-court confidence came from. *** It's unsurprising that the State's Attorney and Ms. renee Norris, was 'incohoots,' [sic] she could only signal her argument to say Martin simply pointing to the man at defense table sitting between two female Defense attorneys ***. Brandon Martin saw someone committing this crime but his [in]ability to identify that assailant is crystal clear from the record. His in-court i.d. is of no value, given the doubt he cast upon his own recollection just two days after the incident."

¶ 21

Defendant also argued that Norris never visited him while he was in Cook County Department of Corrections (CCDOC) custody, nor did she prepare him for trial or return the phone calls of potential defense witnesses. Defendant alleged that Norris's aim was to convince him to accept a plea deal for the attempted first-degree murder charge.

¶ 22 In a handwritten insert to the postconviction petition, defendant alleged that Norris was “ineffective for failing to notify [defendant] that she was representing one of the State’s witness [sic] at the same time she represented [defendant] at trial creating a conflict of interest[.]” This, he argued, violated “U.S. Const. Amend. Fourteen, and Ill. Art. 1. Due Process, and a right to a fair trial, the right to be confronted with accuser face to face guaranteed rights by Ill. Const. of (1970) Art. 1[.]” Defendant further argued that Norris had awareness of Martin’s concurrent incarceration and that she “arranged for [defendant] and Martin to appear in court on several occasions in court room 108 in front of Judge Zebezinski, G. Frank coincide bull pens [sic] [.]”

¶ 23 On April 12, 2018, petitioner filed through counsel a motion requesting the court to order forensic testing of the black leather jacket which had been recovered by the Matteson Police Department and used as evidence in the case against him. The State filed a motion to dismiss the motion for forensic testing, maintaining that defendant had not established a chain of custody for the jacket as required by section 116-3(b) of the Code of Criminal Procedure of 1963 (725 ILCS 5/116-3 (West 2016)), as the jacket was no longer in the possession of the Matteson Police Department. Defendant subsequently withdrew the motion.

¶ 24 Defendant filed a motion for appointment of counsel other than the public defender or to proceed *pro se* on October 23, 2019, describing the public defender office’s representation as “low calibre” and reiterating his belief that Norris and the State’s attorneys had been “incohoots” against him during the trial proceedings. Defendant then filed a motion to vacate on July 18, 2020, advancing similar arguments to those raised in his *pro se* postconviction petition.² In that motion, defendant alleged violations of his rights as “guaranteed by the

² We observe that the July 18, 2020, motion and defendant’s subsequent motions leading up to and including his notice of appeal appear uncounseled, despite the fact that there was no discernible ruling on defendant’s motion for appointment of alternative counsel or to proceed *pro se* in the circuit court record on appeal.

U.S.C.A. 5, and U.S.C.A. 14,” presumably referring to the fifth and fourteenth amendments of the United States Constitution. See U.S. Const., amend. V, XIV. Defendant also argued that Norris was ineffective for failing to “file [a] pretrial identification motion,” contending that “Ms. Norris’s failure to bar in-court identification and/or object to witnesses’ in-court identification effected a deprivation of the accused’s Sixth Amendment right to effective assistance of counsel.” Alleging that Norris simultaneously represented Martin for his burglary case at the time of defendant’s trial, defendant maintained his theory that Norris had “arranged for [defendant] and Mr. Martin to appear in court room 108—Judge Zelezinski, G. Frank on several occasions, [in] coinciding bullpens for Mr, Martin to view [defendant] in an effort to bolster his testimony,” which defendant argued subsequently “impacted Mr. Martin’s ability to identify” defendant in court. Defendant filed an additional request to proceed *pro se* on July 31, 2020.

¶ 25 Defendant filed a *pro se* motion to dismiss “for violation of U.S.C.A. 5” dated August 3, 2020. On September 4, 2020, the circuit court entered an order treating defendant’s motion to dismiss “for violation of U.S.C.A. 5” as a postconviction petition and finding the petition “frivolous and/or patently without merit” pursuant to the Act. The order stated that the circuit court had, on its own motion, pursuant to section 122-2.1(a)(2) of the Act (725 ILCS 5/122-2.1(a)(2) (West 2018)), reviewed the record and found no other postconviction petitions filed by defendant. It therefore dismissed the *pro se* motion to dismiss as a postconviction petition which was frivolous and patently without merit. A handwritten order filed the same day also dismissed defendant’s July 18, 2020, motion to vacate as frivolous and patently without merit.

¶ 26 Defendant appealed the order, and counsel from the Office of the State Appellate Defender was appointed. On January 5, 2023, we allowed appellant’s agreed motion for a

summary disposition. Noting that the circuit court had treated defendant’s collateral pleadings as a postconviction petition pursuant to the Act, we further ordered that the circuit court vacate its September 4, 2020, order, and remanded for compliance with *People v. Shellstrom*, 216 Ill. 2d 45 (2005), and *People v. Pearson*, 216 Ill. 2d 58 (2005). Upon remand, the circuit court informed defendant in a June 23, 2023, order that it intended to recharacterize and treat his pleadings as an initial postconviction petition, providing notice that “any subsequent post-conviction petition will be subject to the restrictions on successive post-conviction petitions” and “[t]hat the litigant now has an opportunity to withdraw the pleading or to amend it so that it contains all the claims appropriate to a post-conviction petition that the litigant believes he or she has.”

¶ 27 Defendant’s postconviction counsel filed a Rule 651(c) certificate on December 19, 2023, stating, “I have examined Petitioner’s *pro se* Petitions for Post-Conviction Relief and as it adequately states petitioner’s contentions of a denial of his constitutional rights, no amendments have been made.” The State then filed a motion to dismiss defendant’s postconviction petition on April 27, 2024, arguing that Norris’s decision not to bar Martin’s in-court identification of defendant was a matter of trial strategy and therefore did not amount to ineffective assistance of counsel. Furthermore, the State argued, defendant only had one court appearance which coincided with Martin’s court appearance for his burglary case—on May 29, 2013—and Martin was assigned on that date to a different judge, courtroom, and public defender of record than defendant.

¶ 28 The State’s motion to dismiss proceeded to a second-stage hearing on August 16, 2024. The State argued that defendant failed to append to his petition any evidence to demonstrate that a pretrial suppression motion of Martin’s in-court identification would have been

meritorious. Postconviction counsel argued that Martin had been able to observe defendant in the bullpen prior to trial, which he characterized as “a constitutional issue because that was an improper showup with no authority there, no counsel present when my client was already represented by counsel.” On that basis, postconviction counsel argued, the matter should proceed to a third-stage evidentiary hearing. The State in turn argued that defendant had not satisfied his burden of demonstrating ineffective assistance of counsel. On the conflict of interest allegation regarding Norris, the State requested that the circuit court take judicial notice of “the setup of the Sixth District Courthouse in Markham.” Noting that Martin and defendant were assigned different public defenders, judges, and courtrooms on the one concurrent date that they both had a court appearance, the State argued that “the original trial record directly contradicts the petitioner’s allegations” with regards to this claim. In response, postconviction counsel argued:

“It’s [defendant]’s allegation that Mr. Martin saw him in lockup. The State again has just stated that they were both in court on the very same day and simply because there is a setup of the courthouse does not mean that the Illinois Department of Corrections does not bring Mr. Martin in through a door or a lockup area where he can view [defendant], and again because [defendant] denies any involvement in this, Judge, the very fact that the victim in this case who could not identify [defendant] with any certainty at the initial lineup and then saw him later on, that’s an unconstitutional violation.

It’s a violation of [defendant]’s due process rights to be represented by counsel at any point or any kind of interaction or identification process happens where the victim

identifies a potential defendant in this case, which is what [defendant]’s allegation is ***.”

¶ 29 The circuit court granted the State’s motion to dismiss, ruling, “As it pertains to allegation *** that PD Norris was representing one of the State’s witnesses, Mr. Martin, I believe at the time she represented [defendant], that allegation has not been proven. So there is no prejudice. There is no deficient performance on behalf of Ms. Norris. There is no conflict.” This timely appeal followed.

¶ 30 ANALYSIS

¶ 31 On appeal, defendant requests that we remand to the circuit court for further second-stage postconviction proceedings, as his postconviction counsel allegedly provided unreasonable assistance and failed to comply with Illinois Supreme Court Rule 651(c) (eff. July 1, 2017) in neglecting to amend his *pro se* postconviction petition to reflect a sixth amendment right to counsel argument.

¶ 32 The Act provides a three-stage process for a defendant in custody to challenge their criminal conviction in the circuit court alleging a substantial denial of constitutional rights in the proceedings which led to the conviction. 725 ILCS 5/122-1 (West 2022). At the first stage, petitioners often proceed *pro se* and are required to allege sufficient facts to present “the ‘gist’ of a constitutional claim.” *People v. Coleman*, 183 Ill. 2d 366, 381 n.2 (1998). The circuit court shall summarily dismiss any postconviction petition which is frivolous or patently without merit within 90 days of its filing. 725 ILCS 5/122-2.1 (West 2022). Following this first stage, the circuit court may appoint counsel for indigent defendants. *Id.* § 122-4. At the second stage, the State must either answer or move to dismiss the petition. *Id.* § 122-5. The circuit court must take all well-pleaded facts that are not positively rebutted by the trial record as true in a second-

stage motion to dismiss, ultimately determining whether the petition demonstrates a substantial showing of a constitutional violation. *Coleman*, 183 Ill. 2d at 380, 385. In an appeal of the dismissal of a second-stage postconviction petition, the record must contain a showing, which may be made by certification by postconviction counsel (Rule 651(c) certificate), that counsel has (1) provided consultation in-person or by phone, mail, or electronic means to the petitioner “to ascertain his or her contentions of deprivation of constitutional rights;” (2) has examined the trial record; and (3) “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). The standard for dismissal of a claim for postconviction relief at the second stage is a legal determination rather than a factual one, and thus appellate review is *de novo*. *People v. Sanders*, 2016 IL 118123, ¶ 31. Similarly, our review of an alleged issue of attorney compliance with Rule 651(c) is *de novo*. *People v. Profit*, 2012 IL App (1st) 101307, ¶ 17.

¶ 33 Rule 651(c) is meant “to ensure that counsel shapes the petitioner’s claims into proper legal form and presents those claims to the court.” *People v. Perkins*, 229 Ill. 2d 34, 44 (2007). As the Act requires a “reasonable” level of assistance for postconviction counsel—in contrast to the higher “effective assistance” standard applied to counsel at trial and as guaranteed through the Illinois and United States Constitutions (see U.S. Const., amend. VI; *Gideon v. Wainwright*, 372 U.S. 335, 341-45 (1963); Ill. Const. 1970, art. I, § 8; *Strickland v. Washington*, 466 U.S. 668, 687-88 (1984); *People v. Albanese*, 104 Ill. 2d 504, 526 (1984))—counsel’s substantial compliance with the requirements of Rule 651(c) is sufficient. *People v. Perez*, 2023 IL App (4th) 220280, ¶ 37; *Profit*, 2012 IL App (1st) 101307, ¶ 18. Further, counsel is not required to amend a defendant’s *pro se* postconviction petition if such amendment would only advance a frivolous or patently nonmeritorious claim. *People v. Huff*,

2024 IL 128492, ¶ 10. Postconviction counsel’s filing of a Rule 651(c) certificate creates a rebuttable presumption of reasonable assistance, which a defendant bears the burden of countering through demonstrating that counsel failed to “substantially comply with the strictures of the rule.” *People v. Addison*, 2023 IL 127119, ¶ 21. Where the Rule 651(c) presumption is successfully rebutted, we are required to remand to the circuit court without further considering the merits of the postconviction petition. *Id.* ¶ 33 (citing *People v. Suarez*, 224 Ill. 2d 37, 47, 51-52 (2007)).

¶ 34 Here, the defendant contends his postconviction counsel provided unreasonable assistance and violated Rule 651(c) for failing to raise a constitutional claim of violation of his sixth amendment right to assistance of counsel at a pretrial bullpen confrontation with one of the State’s witnesses. Citing *U.S. v. Wade*, 388 U.S. 218, 224-25 (1967), *Saltys v. Adams*, 465 F. 2d 1023, 1026-27 (2d Cir. 1972), and *Moore v. Illinois*, 434 U.S. 220, 231 (1977), defendant argues that Martin’s trial identification should have been excluded as it was the result of a confrontation that defendant had with Martin while waiting in the courthouse bullpen on at least one hearing date. Although defendant cited section 8 of article 1 of the Illinois Constitution, the sixth amendment of the United States Constitution, and general due process rights in his *pro se* postconviction filings to advance arguments about the purported impropriety of Martin’s identification, he nevertheless maintains that the omission of an explicit sixth amendment right to counsel claim in his postconviction petition evidences his postconviction counsel’s unreasonable assistance. Specifically, as postconviction counsel advanced the sixth amendment right to counsel claim in oral argument on the hearing on the motion to dismiss, defendant contends that his postconviction counsel violated Rule 651(c) by failing to amend the petition to memorialize that specific claim in writing. As discussed below,

we disagree that postconviction counsel’s conduct here amounts to a Rule 651(c) violation warranting remand.

¶ 35 We note briefly that there appears to be disagreement over whether defendant’s July 18, 2020, motion to vacate should be characterized as part of defendant’s *pro se* postconviction pleadings, alongside his original July 22, 2016, petition filed pursuant to the Act. Although defendant on appeal contends that “[n]either counsel nor [defendant] addressed those pleadings thereafter, and they are not at issue in this appeal,” the circuit court specifically recharacterized defendant’s motion to vacate as a postconviction petition on June 23, 2023, and provided admonishments at our court’s instruction pursuant to the holdings in *Shellstrom*, 216 Ill. 2d 45, and *Pearson*, 216 Ill. 2d 58. Defendant’s postconviction counsel also referred to defendant’s “*pro se* Petitions for Post-Conviction Relief” in his December 19, 2023, Rule 651(c) certificate, regarding both pleadings as postconviction petitions in his review of defendant’s constitutional claims. As our review of the record similarly reveals that the circuit court intended to treat both pleadings as defendant’s initial postconviction petition, we will do the same in this appeal.

¶ 36 Proceeding to the substance of defendant’s Rule 651(c) claim on appeal, defendant characterizes the argument that his postconviction counsel raised at the second-stage motion to dismiss hearing as a claim invoking his sixth amendment right to assistance of counsel. As defendant’s alleged pretrial confrontation with Martin in the courthouse bullpen amounted to an uncounseled identification, defendant argues, Martin’s subsequent in-court identification and testimony should have been barred pursuant to the *per se* exclusionary rule established in *Wade*, 388 U.S. at 224-25, *Saltys*, 465 F. 2d at 1026-27, and *Moore*, 434 U.S. at 231. Defendant characterizes this as a “new legal theory” that postconviction counsel should have memorialized in an amendment to his postconviction petition. Upon our review of the record

below, however, it is not apparent that postconviction counsel ever intended to raise a new argument. Postconviction counsel argued at the second-stage hearing that the alleged bullpen encounter represented “a constitutional issue because that was an improper showup with no authority there, no counsel present when my client was already represented by counsel.” Later, postconviction counsel argued that “the very fact that the victim in this case who could not identify [defendant] with any certainty at the initial lineup and then saw him later on” was “a violation of [defendant]’s due process rights to be represented by counsel at any point or [in] any kind of interaction or identification process [which] happens where the victim identifies a potential defendant in this case ***.”

¶ 37

Defendant’s July 22, 2016, *pro se* postconviction petition referenced his due process rights generally under the fourteenth amendment to the United States Constitution, as well as his rights under section 8, article I of the Illinois Constitution, which includes the post-indictment right to counsel. See U.S. Const., amend. XIV; Ill. Const. 1970, art. I, § 8; see also *Gideon v. Wainwright*, 372 U.S. 335, 341-45 (1963) (incorporating the sixth amendment right to counsel against the states through the due process clause of the fourteenth amendment, U.S. Const., amend. XIV, § 1). In his motion to vacate filed on July 18, 2020, which the circuit court also characterized as a postconviction pleading, defendant described being deprived “of the accused’s Sixth Amendment right to effective assistance of counsel.” Considering the inclusion of these citations and arguments in defendant’s *pro se* proceedings, we do not view postconviction counsel’s oral articulation of the right to counsel claim at the second-stage hearing as advancing a substantially new legal theory.

¶ 38

Defendant’s reliance on *People v. Kirk*, 2012 IL App (1st) 101606, and *People v. Jean*, 2024 IL App (1st) 220807, is similarly misplaced. In *Kirk*, this court found that the defendant’s

postconviction counsel had acted unreasonably in failing to amend the defendant’s *pro se* postconviction petition where he had raised a new ineffective assistance of appellate counsel claim at the second-stage motion to dismiss hearing. *Kirk*, 2012 IL App (1st) 101606, ¶ 36. At that hearing, the State characterized postconviction counsel’s oral articulation of an ineffective assistance of appellate counsel claim as “a total ambush,” when the defendant’s *pro se* postconviction petition’s only discernible claims had related to ineffective assistance of trial counsel. *Id.* ¶¶ 13, 22. Thus, even with the presumption of reasonable assistance created by postconviction counsel’s filing of a Rule 651(c) certificate in that case, the appellate court reversed and remanded for further second-stage proceedings and instructions for postconviction counsel to amend the petition. *Id.* ¶¶ 34-36. In so ruling, our court noted that the ineffective assistance of appellate counsel claim “was derived from the defendant’s allegations and presented by counsel as the only cognizable legal avenue by which the court could reach the crux of the defendant’s claims,” thereby representing an effective admission that defendant’s “main” postconviction claim had been absent from his petition. *Id.* ¶ 31.

¶ 39

By contrast, in the record for the instant appeal, there is no indication that postconviction counsel’s oral formulation at the second-stage hearing of defendant’s right to counsel argument regarding the pretrial bullpen confrontation was a “total ambush” or at all inconsistent with the arguments advanced in defendant’s *pro se* postconviction filings. See *id.* ¶ 13. As outlined above, defendant directly cited his fourteenth amendment due process rights; his rights under section 8, article I of the Illinois Constitution (which provides a post-indictment right to counsel); and his sixth amendment right to counsel in his *pro se* postconviction pleadings. See U.S. Const., amend. XIV, § 1; Ill. Const. 1970, art. I § 8; U.S. Const., amend. VI. Defendant also generally alleged in those pleadings that his trial counsel

was ineffective for failing to file a pretrial motion or to object at trial to Martin’s identification. Although postconviction counsel’s distillation of these arguments at the motion to dismiss hearing may have resulted in a more straightforward presentation, that is not enough to overcome the presumption of reasonableness that postconviction counsel’s Rule 651(c) certificate created. Rather, the rule posits that postconviction counsel’s amendment of a *pro se* petition is obligated only when necessary to adequately present the defendant’s claims, and we hold that such amendment was not necessary here for counsel to substantially comply with the rule. See Ill. S. Ct. R. 651(c) (eff. July 1, 2017); *Profit*, 2012 IL App (1st) 101307, ¶ 18 (“[s]ubstantial compliance with Rule 651(c) is sufficient”); see also *People v. Pendleton*, 223 Ill. 2d 458, 476 (2006) (holding that “[w]hile postconviction counsel *may* conduct a broader examination of the record *** and may raise additional issues if he or she so chooses, there is no obligation to do so” (emphasis in original and internal citations omitted)); *People v. Richardson*, 382 Ill. App. 3d 248, 256 (2008) (holding that postconviction counsel who opted not to amend the defendant’s *pro se* petition nonetheless provided reasonable assistance in substantial compliance with Rule 651(c) as the *pro se* petition already sufficiently presented a “gist” of the defendant’s constitutional claims, and noting that, should “fundamental fairness *** require[] review of the two claims [defendant] did not himself present in this successive *pro se* petition, he is free to file a second successive petition”).

¶ 40

We also fail to view defendant’s case as analogous to *Jean*, where postconviction counsel orally advanced a proportionate penalties clause claim for the first time at second-stage proceedings without amending the *pro se* petition to reflect that argument. *Jean*, 2024 IL App (1st) 220807, ¶ 24. Like in *Kirk*, the omission of this argument from the defendant’s postconviction petition was critical, as the defendant in *Jean* conceded on appeal that the only

substantive claim asserted in her *pro se* petition—an eighth amendment claim—had no merit by the time the petition reached the second stage since it was unsupported by recent case law. Compare *Kirk*, 2012 IL App (1st) 101606, ¶ 31, with *Jean*, 2024 IL App (1st) 220807, ¶ 31. By contrast, we do not view defendant’s right to counsel argument in the instant appeal as a critical omission, as defendant had already included the primary components of that argument in his *pro se* postconviction pleadings, and the opposing sides were able to otherwise argue on the merits of defendant’s postconviction claims at the second-stage hearing. As such, the Rule 651(c) certificate presumption has not been adequately rebutted, and defendant has failed to demonstrate that his postconviction counsel provided unreasonable assistance.

¶ 41 As defendant does not raise any bases for appeal of the circuit court’s dismissal of his postconviction petition beyond his Rule 651(c) claim, those arguments are forfeited, and our review is limited to the above analysis of the reasonableness of defendant’s postconviction counsel alone. See *People v. Bass*, 2018 IL App (1st) 152650, ¶ 10 (citing *People v. Cotto*, 2016 IL 119006, ¶ 49, and Ill. S. Ct. R. 341(h)(7) (eff. May 25, 2018) (“Points not argued are forfeited ***.”)). Finding that defendant’s postconviction counsel exhibited reasonable assistance and acted in substantial compliance with Rule 651(c), we affirm the circuit court’s second-stage dismissal of defendant’s postconviction petition.

¶ 42 CONCLUSION

¶ 43 For the reasons set forth above, the circuit court’s second-stage dismissal of defendant’s postconviction petition is affirmed.

¶ 44 Affirmed.