

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) 251138-U

NO. 4-25-1138

IN THE APPELLATE COURT

OF ILLINOIS

FOURTH DISTRICT

FILED

October 20, 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
ANTONIO DURRELL ANDERSON,	)	No. 08CF1120
Defendant-Appellant.	)	
	)	Honorable
	)	Stephen A. Kouri,
	)	Judge Presiding.

JUSTICE HARRIS delivered the judgment of the court.
Justices Doherty and Knecht concurred in the judgment.

ORDER

¶ 1 *Held:* The appellate court granted appellate counsel’s motion to withdraw and affirmed the trial court’s dismissal of the postconviction petition at the second stage of postconviction proceedings.

¶ 2 Defendant, Antonio Durrell Anderson, appeals the dismissal of his postconviction petition at the second stage of postconviction proceedings. The Office of the State Appellate Defender (OSAD) has been appointed to represent defendant on appeal. OSAD has filed a motion to withdraw pursuant to Illinois law on the basis that an appeal in this case would be without arguable merit. See *People v. Johnson*, 192 Ill. 2d 202, 207 (2000); *People v. Greer*, 212 Ill. 2d 192, 211-12 (2004); *People v. White*, 2020 IL App (4th) 160793, ¶¶ 42-57; *People v. Lee*, 251 Ill. App. 3d 63, 64-65 (1993). We grant OSAD’s motion to withdraw and affirm the judgment of the trial court.

¶ 3

I. BACKGROUND

¶ 4 In 2008, a grand jury charged defendant with attempted first degree murder (720 ILCS 5/8-4(a), 9-1(a) (West 2008)), five counts of home invasion (*id.* § 12-11(a)(2), (a)(3), (a)(4), (a)(5)), aggravated battery with a firearm (*id.* § 12-4.2(a)(1)), and armed robbery (*id.* § 18-2(a)(2)). The charges were related to an incident during which defendant allegedly entered the home of Joseph Pocius, shot Joseph in the head, and took money from the person or presence of Joseph's wife, Angela Pocius. The attempted first degree murder charge and two of the home invasion charges were dismissed on the State's motion prior to trial.

¶ 5 A. Motion to Suppress

¶ 6 On February 13, 2009, defendant filed a motion to suppress Angela's identification of him in a lineup at the sheriff's office on the basis that the circumstances of the lineup were so unnecessarily suggestive as to give rise to a substantial likelihood of an unreliable identification.

¶ 7 On March 5, 2009, a hearing was held on the motion to suppress. Angela testified that she viewed a lineup at the sheriff's office on September 10, 2008. Detective David Hoyle and Detective David Wilson were present. Hoyle had the individuals in the lineup make two verbal statements that the suspect had said to Angela during the incident. The individuals were wearing "dust masks" while they made the statements. Angela then indicated to the officers that she was positive in her identification of the second individual in the lineup. She stated she recognized the man's voice and eyes. She indicated she could not remember whether the men were wearing identification bands during the lineup. According to Angela, the officers did not tell her who to pick or that she had to pick someone.

¶ 8 Detective Brian Asbell testified that he prepared the lineup conducted on September 10, 2008, by obtaining volunteer jail inmates who had the same physical

characteristics as defendant. Photographs of the lineup and mug shots of the participants were admitted into evidence. Asbell stated that inmates at the jail wore identification wristbands. He knew defendant was not wearing a wristband at the time of the lineup.

¶ 9 Wilson testified that he was present with Angela during the lineup. He stated that it was likely defendant did not have an identification wristband at the time of the lineup, but the other participants would have had wristbands. Before taking her into the room to view the lineup, Wilson explained to Angela how the lineup would work and that he wanted her to look at the individuals in the lineup and see if she could identify the man who shot her husband. After viewing the individuals, she indicated that she saw the person who shot her husband, but she did not identify which one. She stated she wanted to hear the participants speak first. Wilson testified that he and Angela did not speak much to each other during the lineup.

¶ 10 Defendant testified that he was not wearing a wristband during the lineup, but the other participants were. He stated that, during the lineup, the participants held up numbered placards, such that his lack of a wristband would have been visible. He stated he could hear a woman and a detective talking behind the mirror during the lineup, but he could not actually see them. He stated that the woman “pointed to a guy next to [him],” and the detective told her to look again. He stated he knew who the woman pointed to by hearing her talk to the detectives and by tapping on the window.

¶ 11 The trial court denied the motion to suppress, finding that it had not been shown that the lineup was so unnecessarily suggestive as to give rise to a substantial likelihood of an unreliable identification.

¶ 12 B. Trial

¶ 13 On June 22, 2009, the matter proceeded to a jury trial. Angela testified that, on

September 7, 2008, she resided in a house with her husband, Joseph. Lanny and Tina Irons lived in the home and were present that night, as well. At approximately 10:30 p.m., Angela heard a knock at the front door. Joseph was sleeping in a bedroom upstairs, and Lanny and Tina were sleeping in the basement. Angela went to the front door and asked who was there, and the person on the other side of the door said, “ ‘Police.’ ” Angela opened the door and observed three men wearing white “painters’ masks” that covered their noses and mouths. One of them told her to put her head down and not look at him. He then pointed a gun at her and stated that “he wanted the money and he wanted the drugs.” Angela told him there was nothing there.

¶ 14 Angela testified that the men took her to the basement. One of them struck Lanny with the barrel of a gun and repeatedly asked where the drugs and money were. The other men rifled through drawers. One of the men, who Angela identified in court as defendant, told Angela to go back upstairs, and he accompanied her to Joseph’s bedroom. Defendant told Joseph to wake up or he would shoot him. Joseph jumped up, pushed defendant, and told him to get out of his house. Defendant hit Joseph with the butt of the gun, and Joseph fell. Defendant shot Joseph in the forehead just before he hit the floor. Defendant was standing three or four feet from Angela, and she was able to see his eyes and observe his height and weight. Defendant then asked Angela for money. Angela gave him approximately \$850. The men left, and Angela called 911. An officer testified that the police responded at 10:47 p.m.

¶ 15 Angela testified that she identified defendant in a lineup at the police station on September 10, 2009, after hearing his voice. She stated that Joseph suffered from paralysis due to his injuries and resided in a nursing home.

¶ 16 Bayless Guffy, Angela’s son, testified that a man named Bobby Short contacted him approximately two weeks before the shooting trying to arrange to purchase cannabis from

him. He had conducted transactions with Short in the past but stopped doing so approximately one year before the incident. Guffy previously lived with Angela and Joesph, but he moved out in July 2008.

¶ 17 Short testified that he knew defendant because he was formerly married to defendant's cousin. He also knew Guffy because they had engaged in prior drug sales. A few days before the shooting, Short arranged to purchase a half pound of cannabis from Guffy. Short, defendant, and Terrance Bassett planned to rob Guffy of the cannabis. Before the shooting, Short showed defendant where the Pocius house was located, but he was not present on the night of the shooting. Approximately two days after the shooting, defendant told Short he had to shoot Joseph because Joseph was going to grab a gun. Short stated that he was given a plea deal of 14 years' imprisonment for residential burglary in exchange for his truthful testimony.

¶ 18 Bassett testified that he, defendant, and Short developed the robbery plan approximately one week before the incident. On the night of the incident, Bassett, defendant, and Anthony Taliaferro went to the Pocius house. Bassett gave defendant a gun, and defendant gave Bassett a white dust mask to wear. They knocked on the door. Defendant announced they were the police, and a short woman opened the door. They went to the basement, and Bassett observed a man and woman lying in a bed. He asked them where the drugs were, and he punched the man in the head one time. Defendant went upstairs by himself. Bassett heard a gunshot, and he and Taliaferro ran out of the house. Defendant ran out at the same time they did. Defendant told Bassett that he shot the owner of the house in the head. Bassett stated he received a plea deal where he would be sentenced to 15 years' imprisonment for home invasion in exchange for his truthful testimony.

¶ 19 Sylvia Balton testified that defendant and Taliaferro came to her residence at

approximately 11 p.m. on the night of the incident. Defendant indicated that he had won some money, and it looked like he had approximately \$1,000 in cash. Defendant changed his shoes and told Taliaferro to throw his old shoes away. He then washed his hands with bleach and dish detergent. After a few minutes, he received a call from his girlfriend and left to pick her up.

¶ 20 The trial court admitted a joint stipulation into evidence indicating that there were 15 phone calls from Jennifer Johnston's phone to defendant's phone on the night of the incident between 10:39 p.m. and 11:24 p.m. The first 10 calls went to voicemail. For the eleventh call, data was not available regarding the duration of the call. A phone call from Johnston's phone went through to defendant's phone for the first time at 11:04 p.m., and the duration of the call was 20 seconds. Two more calls went through at 11:14 p.m. and 11:24 p.m., and the duration of the calls was 43 seconds and 5 seconds, respectively. The parties also stipulated that between 10:20 p.m. and 11 p.m., defendant did not make any outgoing calls from his cell phone, and all incoming calls during that time period went to voicemail. The parties further stipulated that defendant made no calls from his cell phone to Johnston's cell phone between 10:30 p.m. and 11:30 p.m.

¶ 21 Johnston testified that, at the time of the incident, she was in a romantic relationship with defendant. She testified that defendant dropped her off at work at 2:45 p.m. on the day of the incident and was there waiting for her when she got off at 11:15 p.m. She did not know how long he had been waiting.

¶ 22 The jury found defendant guilty of three counts of home invasion, aggravated battery with a firearm, and armed robbery.

¶ 23 The trial court ultimately sentenced defendant to 55 years' imprisonment for one count of home invasion, which included a mandatory 25-year firearm enhancement based on the

jury's finding that, during the offense, defendant had discharged a firearm that proximately caused great bodily injury to another. The court sentenced defendant to 45 years' imprisonment for armed robbery, which included a mandatory 15-year firearm enhancement due to the jury's finding that defendant was armed with a firearm during the commission of the offense. The court found that defendant was subject to mandatory consecutive sentencing for these two convictions and that the remaining counts merged.

¶ 24 C. Direct Appeal

¶ 25 On direct appeal, defendant argued that (1) the trial court erred in its admonishments to the prospective jurors, (2) the court erred by failing to answer the jury's request to define reasonable doubt, (3) the court erred by allowing the State to admit irrelevant and prejudicial evidence, and (4) the court improperly considered a factor inherent in the offense when sentencing defendant for home invasion. *People v. Anderson*, 2011 IL App (3d) 090904-U, ¶ 2. The Appellate Court, Third District, affirmed the trial court's judgment. *Id.* ¶ 69.

¶ 26 D. Postconviction Proceedings

¶ 27 On March 4, 2013, defendant, *pro se*, filed a postconviction petition raising claims that (1) he is actually innocent, (2) he was not proven guilty beyond a reasonable doubt, (3) the trial court violated his right to due process by denying his motion to suppress because the lineup was unduly suggestive, (4) section 5-8-4 of the Unified Code of Corrections (Code) (730 ILCS 5/5-8-4 (West 2008)) was unconstitutional because it violated the single subject rule, (5) the mandatory sentencing enhancements added to his sentence for home invasion and armed robbery constituted an improper double-enhancement, and (6) his sentences violated the one-act, one-crime rule. The trial court advanced the *pro se* postconviction petition to the second stage of postconviction proceedings and appointed counsel to represent defendant. On June 30, 2014,

counsel filed a certificate pursuant to Illinois Supreme Court Rule 651(c) (eff. Feb. 6, 2013).

¶ 28 On January 16, 2015, the State filed a motion to dismiss the postconviction petition, which asserted the petition was untimely and that the claims in the *pro se* petition were frivolous or patently without merit.

¶ 29 On March 16, 2015, the trial court granted the State’s motion to dismiss, finding that the petition was untimely and defendant had failed to establish that its late filing was not due to his culpable negligence. The court also found the claims in the petition lacked merit or were forfeited due to defendant’s failure to raise them on direct appeal.

¶ 30 On appeal, the Third District found that postconviction counsel failed to provide a reasonable level of assistance by failing to amend the petition to (1) allege that the late filing of the petition was not due to defendant’s culpable negligence and (2) assert a claim of ineffective assistance of appellate counsel. *People v. Anderson*, 2017 IL App (3d) 150249-U, ¶¶ 18-19. The court reversed and remanded for new second-stage proceedings. *Id.* ¶ 20.

¶ 31 On remand, the State filed a new motion to dismiss defendant’s *pro se* postconviction petition on October 30, 2018.

¶ 32 On February 24, 2020, defendant, through counsel, filed a “Supplemental Petition for Post-Conviction Relief,” which incorporated by reference all of the arguments contained in defendant’s *pro se* postconviction petition. The supplemental postconviction petition alleged that defendant’s appellate counsel provided ineffective assistance by failing to raise the issues set forth in the *pro se* postconviction petition on direct appeal. The supplemental petition also asserted defendant’s late filing of the *pro se* postconviction petition was not due to his culpable negligence because he had requested an extension of time prior to the deadline. That same day, postconviction counsel filed a Rule 651(c) certificate (see Ill. S. Ct. R. 651(c) (eff. July 1,

2017)).

¶ 33 Over the next three years, the State requested and was granted continuances for the purpose of filing a new motion to dismiss. In August 2023, the matter was reassigned to a new postconviction attorney. On October 18, 2024, defendant's new counsel adopted his prior counsel's supplemental postconviction petition and Rule 651(c) certificate. On April 11, 2025, the State filed a new motion to dismiss, asserting that the allegations in the postconviction petition were baseless and lacked legal merit, and the claims contained in the petition were forfeited because they could have been raised on direct appeal but were not.

¶ 34 On October 21, 2025, the trial court entered an order dismissing the postconviction petition. The court found that the late filing of the *pro se* postconviction petition was not due to defendant's culpable negligence, but the issues raised in the petition lacked merit. The court stated it adopted the rationale of its prior order of March 16, 2015.

¶ 35 This appeal followed.

¶ 36 II. ANALYSIS

¶ 37 On appeal, OSAD was appointed to represent defendant and has moved to withdraw, asserting that an appeal in this case would be without arguable merit. Appointed counsel has indicated that she mailed a copy of her motion to withdraw to defendant and advised him that he would be given an opportunity to respond. Defendant has not filed a response.

¶ 38 Appointed appellate counsel indicates that she considered multiple possible issues on appeal but ultimately concluded none were nonfrivolous. For the reasons that follow, we agree.

¶ 39 A. Substantial Showing of a Constitutional Violation

¶ 40 The Post-Conviction Hearing Act (725 ILCS 5/122-1 *et seq.* (West 2024))

provides a three-stage method by which persons under criminal sentence may assert their convictions were the result of a substantial denial of their constitutional rights. *People v. Pingelton*, 2022 IL 127680, ¶ 32. At the first stage, the trial court must independently review the postconviction petition and shall dismiss it if it determines it is frivolous or patently without merit. *Id.* If the postconviction petition is not dismissed at the first stage, it advances to the second stage, where counsel may be appointed to assist an indigent defendant and the State may file a motion to dismiss or an answer to the petition. *Id.* ¶¶ 32-34. At this stage, the court must determine whether the petition and accompanying documentation make a substantial showing of a constitutional violation. *Id.* ¶ 34. “If the petition makes the requisite substantial showing, it is advanced to a third-stage evidentiary hearing.” *Id.* Where, as here, a postconviction petition is dismissed at the second stage, our review is *de novo*. *Id.* ¶ 28.

¶ 41 Here, appointed counsel indicates that she considered arguing that defendant’s postconviction petition made a substantial showing of the following claims: (1) he is actually innocent, (2) appellate counsel was ineffective for failing to argue that the trial evidence was insufficient to prove defendant guilty beyond a reasonable doubt, (3) appellate counsel was ineffective for failing to argue Angela’s identification of defendant should have been suppressed, (4) the mandatory consecutive sentencing statute violated the “single subject rule,” (5) the application of firearm sentencing enhancements for both home invasion and armed robbery constituted an improper double enhancement, and (6) defendant’s convictions violated the one-act, one-crime rule. We address each claim in turn.

¶ 42 *1. Actual Innocence*

¶ 43 Counsel asserts that she considered arguing defendant made a substantial showing of a claim of actual innocence but determined that such an argument would be without arguable

merit. “To succeed on a claim of actual innocence, the petitioner must present evidence that is (1) newly discovered, (2) material and not cumulative, and (3) of such a conclusive character it would probably change the result on retrial.” *People v. McCoy*, 2026 IL 131565, ¶ 54.

¶ 44 Here, defendant has failed to present any newly-discovered evidence—that is, evidence that was discovered after the trial and could not have been discovered earlier through the exercise of due diligence. See *id.* He asserts in the *pro se* petition that “voice [t]ransmissions” from his cell phone and data from his cell phone provider showing the time and locations of each call he made on the day of the incident would prove his innocence by showing where he was during the crime. However, he has not actually produced these records. He attached an affidavit from his cousin, who asserted that defendant called her on the night of the incident at approximately 10:30 or 10:35 p.m. However, defendant would have had knowledge of this phone call at the time of the trial. Moreover, a stipulation signed by defense counsel and defendant personally was entered into evidence at the trial, which stated that defendant did not make any outgoing calls from his cell phone between 10:20 p.m. and 11 p.m. on the night of the incident and that all incoming calls during that period went to voicemail. Defendant also notes in his *pro se* postconviction petition that he explained in an affidavit why he failed to attach an affidavit from Johnston, his alibi witness. However, he does not proffer any alibi evidence that was not presented at the trial.

¶ 45 *2. Sufficiency of the Evidence*

¶ 46 Counsel asserts that she considered arguing that defendant made a substantial showing of a claim that his appellate counsel provided ineffective assistance for failing to challenge the sufficiency of the trial evidence, but she concluded such an argument would be without arguable merit. To establish a claim of ineffective assistance of appellate counsel, a

defendant must show that (1) appellate counsel's performance was deficient and (2) but for counsel's errors, there is a reasonable probability the appeal would have been successful. *People v. English*, 2013 IL 112890, ¶ 33. "[A]ppellate counsel is not required to brief every conceivable issue on appeal but may competently refrain from briefing meritless issues." *People v. Wesley*, 2019 IL App (1st) 170442, ¶ 20. Unless an issue is meritorious, a defendant is not prejudiced by counsel's failure to raise it on direct appeal. *Id.*

¶ 47 "Where the defendant challenges the sufficiency of the evidence used to convict him, the reviewing court must determine, considering the evidence in the light most favorable to the prosecution, whether any rational trier of fact could have found the essential elements met beyond a reasonable doubt." *People v. Swenson*, 2020 IL 124688, ¶ 35.

¶ 48 In order to prove defendant guilty of home invasion as charged in this case, the State was required to prove that defendant was not a peace officer acting in the line of duty and knowingly entered Joseph's dwelling without authority when he knew or had reason to know that one or more persons would be present and personally discharged a firearm that caused great bodily harm to Joseph. 720 ILCS 5/12-11(a)(5) (West 2008). To prove defendant guilty of armed robbery as charged in this case, the State was required to prove that he knowingly took property from the person or presence of Angela by using force or threatening the imminent use of force while armed with a firearm. *Id.* § 18-2(a)(2).

¶ 49 The trial evidence, viewed in the light most favorable to the State, was more than sufficient to prove defendant guilty of home invasion and armed robbery. Angela's testimony showed that defendant entered her home at night after falsely claiming to be a police officer, knowing she was inside. She stated that he was armed with a gun throughout the incident. Angela testified that defendant eventually went into Joseph's bedroom and shot him in the head.

After shooting Joseph, defendant asked Angela for money, and she gave him approximately \$850. She subsequently identified defendant in a lineup and in court. Bassett's testimony also established that defendant was present in the Pocius home on the night of the incident and was in possession of a gun. Short testified that he planned the robbery with defendant and Bassett. Balton testified that she saw defendant at approximately 11 p.m. on the night of the incident, and he was in possession of approximately \$1,000 in cash. Thus, we conclude that appellate counsel was not ineffective for failing to challenge the sufficiency of the evidence because such a claim would have lacked merit. See *Wesley*, 2019 IL App (1st) 170442, ¶ 20.

¶ 50

3. Identification Evidence

¶ 51 Counsel states that she considered arguing that defendant made a substantial showing of a claim that his appellate counsel was ineffective for failing to challenge Angela's identification of defendant but considered that such an argument would be without arguable merit. In his *pro se* postconviction petition, defendant argued that his right to due process was violated when the trial court denied his motion to suppress Angela's identification. He asserted that police officers coached Angela into identifying him during the lineup by telling her who to select and to choose again when she selected the individual standing next to him. He also contended the lineup was unduly suggestive because the other participants were wearing wristbands and he was not.

¶ 52 It is generally the defendant's burden to show that a pretrial identification was impermissibly suggestive, and, once the defendant has made such a showing, the State may overcome it by showing that the identification was based on the witness's independent recollection. *People v. Enis*, 163 Ill. 2d 367, 398 (1994). In determining whether, under the totality of the circumstances, the identification was reliable despite a suggestive procedure,

courts consider (1) the witness's opportunity to view the defendant during the offense, (2) the witness's degree of attention, (3) the accuracy of the witness's prior description of the offender, (4) the witness's level of certainty during the identification, and (5) the length of time between the commission of the crime and the identification. *People v. Johnson*, 2026 IL 131337, ¶ 64.

¶ 53 Here, defendant failed to show that the lineup was unduly suggestive. His contentions that officers coached Angela by telling her who to identify in the lineup and to choose again when she chose the person next to defendant are unsupported by the record. While defendant testified at the suppression that he could hear a woman talking to detectives during the lineup and that the woman pointed to a man next to him before a detective told her to "look again," he admitted that he could not actually see the individuals behind the mirror in the room where the lineup was conducted. Angela testified that the officers did not tell her who to pick, and Wilson stated that he did not speak to Angela much during the lineup. While the evidence at the suppression hearing showed that defendant was not wearing a wristband during the lineup and the other participants were wearing them, Angela indicated that she did not remember if the others were wearing wristbands. Rather, she stated she identified defendant by his eyes and voice.

¶ 54 Because the identification issue identified by defendant lacked merit, his appellate counsel was not ineffective for failing to raise it. See *Wesley*, 2019 IL App (1st) 170442, ¶ 20.

¶ 55 *4. Single Subject Rule*

¶ 56 Counsel indicated that she considered arguing defendant made a substantial showing of a claim that section 5-8-4 of the Code (730 ILCS 5/5-8-4 (West 2008)), under which defendant received mandatory consecutive sentences, was unconstitutional in violation of the single subject rule. However, counsel determined that this argument was without arguable merit.

¶ 57 In his *pro se* petition, defendant asserted that section 5-8-4 of the Code (*id.*) was not a valid statute because it was “passed using Public Act 89-428 [(eff. Dec. 13, 1995)],” which our supreme court found violated the single subject rule in *Johnson v. Edgar*, 176 Ill. 2d 499, 518 (1997). Defendant acknowledges that Public Act 89-428 was amended by Public Act 89-462 (eff. May 29, 1996), but he argues that the violation of the single subject rule could not be cured by amending it with subsequent legislation and that section 5-8-4 of the Code remains invalid.

¶ 58 We find the foregoing argument lacks merit. Defendant is correct that the supreme court ruled in *Johnson* that Public Act 89-428 was invalid because it violated the single subject rule. *Johnson*, 176 Ill. 2d at 518. However, the only way in which Public Act 89-428 altered section 5-8-4 of the Code (730 ILCS 5/5-8-4 (West 1994)) was by adding predatory criminal sexual assault of a child (720 ILCS 5/5-12-14.1 (West 1994)) as an offense subject to mandatory consecutive sentencing. As defendant was not charged with predatory criminal sexual assault of a child, it is not clear how the potential unconstitutionality of this portion of the statute could invalidate his sentence. Even if it somehow could, this portion of the statute was subsequently reenacted by the legislature with Public Act 89-462 and was therefore effective from the point that law went into effect in May 1996, over 10 years prior to the offenses in the instant case. See *People v. Jaramillo*, 307 Ill. App. 3d 914, 915 (1999).

¶ 59 *5. Double Enhancement*

¶ 60 Counsel indicates she considered arguing that defendant made a substantial showing of a claim that he was subject to an impermissible double enhancement when the trial court imposed firearm sentencing enhancements for both home invasion and armed robbery but concluded such a claim would be without arguable merit.

¶ 61 “Generally, a factor implicit in the offense for which the defendant has been

convicted cannot be used as an aggravating factor in sentencing for that offense.” *People v. Phelps*, 211 Ill. 2d 1, 11 (2004). The dual use of a single factor in this manner is a “double enhancement” and is impermissible unless the legislature expresses the clear intention to enhance the penalty based on some aspect of the crime. *Id.* at 12, 15.

“A double enhancement occurs when either (1) a single factor is used both as an element of an offense and as a basis for imposing a harsher sentence than might otherwise have been imposed, or (2) the same factor is used twice to elevate the severity of the offense itself.” *People v. Guevara*, 216 Ill. 2d 533, 545 (2005).

“[T]he double-enhancement rule prohibits a single factor from being used twice with respect to the *same offense*.” (Emphasis in original.) *Phelps*, 211 Ill. 2d at 17. The rule does not prohibit the use of a single factor to enhance two separate and distinct offenses. *Id.*; *People v. Siguenza-Brito*, 235 Ill. 2d 213, 232-33 (2009).

¶ 62 Here, defendant contends that an impermissible double enhancement occurred when mandatory firearm add-ons were imposed as part of his sentences for two separate offenses. As defendant has not argued that his possession or discharge of a firearm was used to enhance a single offense twice, he has not shown that a double enhancement was imposed. See *Phelps*, 211 Ill. 2d at 17. Moreover, the firearm enhancements imposed for each offense in this case were mandated by statute and, accordingly, were clearly intended by the legislature. See 720 ILCS 5/12-11(a)(5), (c), 18-2(a)(2) (West 2008). Thus, defendant has not shown that an impermissible double enhancement was imposed in this case, and, accordingly, he could not establish that appellate counsel was ineffective for failing to raise a double enhancement argument. See *Wesley*, 2019 IL App (1st) 170442, ¶ 20.

¶ 63

6. One-Act, One-Crime Rule

¶ 64 Counsel indicates she considered arguing that defendant's sentences for home invasion and armed robbery violated the one-act, one-crime rule but concluded such an argument would be without arguable merit. Under the one-act, one-crime rule, "a criminal defendant may not be convicted of multiple offenses when those offenses are all based on precisely the same physical act." *People v. Coats*, 2018 IL 121926, ¶ 11. In determining whether a violation of the one-act, one-crime rule has occurred, the court first "ascertains whether the defendant's conduct consisted of a single physical act or separate acts." *Id.* ¶ 12. If the defendant committed multiple physical acts, the court then considers whether any of the offenses are lesser-included offenses. *Id.* If they are not, then multiple convictions are proper. *Id.*

¶ 65 Here, defendant was convicted of home invasion in that he knowingly and without authority entered Joseph's residence, having reason to know one or more persons were present inside, and, while inside, personally discharged a firearm that was the proximate cause of great bodily injury to Joseph. See 720 ILCS 5/12-11(a)(5), (c) (West 2008). Defendant was convicted of armed robbery in that he, while armed with a handgun, took money from the person or presence of Angela by threatening the imminent use of force. See *id.* § 18-2(a)(2), (b). Thus, the two offenses were based on distinct physical acts—*i.e.*, entering a residence and shooting Joseph (home invasion) and taking money from Angela's person or presence by threatening the imminent use of force (armed robbery). Moreover, armed robbery is not a lesser-included offense of home invasion. See *People v. Johnson*, 2018 IL App (3d) 150679, ¶ 27. Accordingly, we agree with counsel's conclusion that defendant's one-act, one-crime argument lacked arguable merit and find that appellate counsel was not ineffective for failing to raise it on direct appeal. See *Wesley*, 2019 IL App (1st) 170442, ¶ 20.

¶ 66 We also note that, in his *pro se* postconviction petition, defendant argued as a

component of his one-act, one-crime argument that he should not have been subject to extended-term sentencing. However, the trial court did not impose an extended-term sentence in this case, and we find this portion of his argument to be irrelevant.

¶ 67

B. Compliance with Rule 651(c)

¶ 68

Counsel asserts that she considered arguing that postconviction counsel failed to comply with Illinois Supreme Court Rule 651(c) (eff. July 1, 2017) but determined that such an argument would be without arguable merit. We agree that the record does not demonstrate that postconviction counsel failed to comply with Rule 651(c). After remand, postconviction counsel filed a valid Rule 651(c) certificate, which created a rebuttable presumption that defendant received reasonable assistance of postconviction counsel. See *People v. Smith*, 2022 IL 126940, ¶ 29. Nothing in the record rebuts this presumption. Notably, postconviction counsel also filed a supplemental postconviction petition addressing the deficiencies previously identified by the appellate court—namely, alleging the late filing of the petition was not due to defendant’s culpable negligence and that appellate counsel provided ineffective assistance by failing to raise the claims in the *pro se* postconviction petition on direct appeal. While the postconviction attorney who filed the Rule 651(c) certificate and supplemental petition later withdrew, defendant’s new postconviction counsel adopted the certificate and supplemental petition and was not required to file a new certificate. See *id.*

¶ 69

III. CONCLUSION

¶ 70

For the reasons stated, we grant OSAD’s motion to withdraw and affirm the trial court’s judgment.

¶ 71

Affirmed.