

NOTICE

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2026 IL App (5th) 230667-U

NO. 5-23-0667

IN THE

APPELLATE COURT OF ILLINOIS

FIFTH DISTRICT

NOTICE

This order was filed under Supreme Court Rule 23 and is not precedent except in the limited circumstances allowed under Rule 23(e)(1).

THE PEOPLE OF THE STATE OF ILLINOIS,	)	Appeal from the
	)	Circuit Court of
Plaintiff-Appellee,	)	Massac County.
	)	
v.	)	No. 04-CF-86
	)	
SHAROD J. ROUNDTREE,	)	Honorable
	)	Cord Z. Wittig,
Defendant-Appellant.	)	Judge, presiding.

JUSTICE BARBERIS delivered the judgment of the court.
Justice Vaughan concurred in the judgment.*

ORDER

¶ 1 *Held:* The circuit court’s second-stage dismissal of defendant’s postconviction petition is affirmed over defendant’s claims that postconviction counsel provided unreasonable assistance.

¶ 2 On July 14, 2020, defendant, Sharod J. Roundtree, through retained counsel, filed a postconviction petition for relief pursuant to the Post-Conviction Hearing Act (Act) (725 ILCS 5/122-1 *et seq.* (West 2018)). The circuit court of Massac County reviewed the petition but took no action until after counsel filed an appearance on April 21, 2021. On May 13, 2022, the circuit court dismissed the petition as untimely and unsupported by new evidence of actual innocence. On appeal, this court vacated the summary dismissal based on the circuit court’s failure to act on

*Justice Moore fully participated in the decision prior to his retirement. See *Cirro Wrecking Co. v. Roppolo*, 153 Ill. 2d 6 (1992).

the petition within 90 days, as required by statute, and remanded the matter for second-stage postconviction proceedings. *People v. Roundtree*, No. 5-21-0154 (2022) (unpublished summary order under Illinois Supreme Court Rule 23(c)); see also 720 ILCS 5/122-2.1(a)(2) (West 2020). On January 18, 2023, retained counsel filed an amended petition, raising claims of actual innocence, various constitutional violations, and ineffective assistance of counsel. The State moved to dismiss. Following a hearing, the circuit court granted the State’s motion and dismissed the amended petition, finding that defendant failed to allege facts establishing that his delay was not due to his own culpable negligence and that the petition did not set forth a viable claim of actual innocence. This appeal followed. On appeal, defendant argues that he received unreasonable assistance of postconviction counsel. For the following reasons, we affirm the decision of the circuit court.

¶ 3

I. BACKGROUND

¶ 4 We limit our recitation of the facts to those necessary for our resolution of the appeal. We recite additional facts in the analysis section as necessary to address defendant’s specific arguments on appeal. On January 24, 2005, defendant pled guilty to first degree murder, and following an April 6, 2005, sentencing hearing, was sentenced to 27 years’ imprisonment. The sentencing hearing was not audio recorded, and no transcript is available. Only docket notes exist.

¶ 5 On April 20, 2005, defendant filed a *pro se* motion to reduce sentence. The circuit court found no basis for reducing the sentence and denied the motion. Defendant did not file a direct appeal.

¶ 6 On April 7, 2014, defendant filed a *pro se* motion seeking to obtain, without cost, the transcripts and records relating to his conviction and sentence. The circuit court denied the motion as untimely. Defendant subsequently filed a “motion of complaint” on July 31, 2014, seeking

transcripts and records related to his case again. The circuit court denied this motion, holding that defendant was not entitled to copies of transcripts or the common law record.

¶ 7 On July 14, 2020, privately retained attorney Michael Costello filed on defendant's behalf a petition for postconviction relief. The petition alleged freestanding innocence; that his plea was not knowing and voluntary because he was under mental stress after having previously taken prescribed psychotropic medications; ineffective assistance of counsel; and that his plea and the sentence were voidable because the factual basis for his plea was incorrect. The circuit court did not review the petition until April 13, 2021, and declined to take action until defendant's postconviction counsel filed an entry of appearance. On April 21, 2021, attorney Costello filed an entry of appearance as defendant's attorney.

¶ 8 On May 13, 2021, the circuit court entered a written order dismissing the postconviction petition. The court noted that although attorney Costello filed the postconviction petition on July 14, 2020, he did not enter his appearance as defendant's attorney until April 21, 2021, so the court treated the postconviction petition as having been filed and docketed on April 21, 2021. Further, the court determined that dismissal was appropriate where the petition was filed after the three-year limit and the actual innocence claim was frivolous. Defendant appealed.

¶ 9 On appeal, this court held that the circuit court failed to act on the petition within the 90-day period required by statute. *People v. Roundtree*, No. 5-21-0154 (2022) (unpublished summary order under Illinois Supreme Court Rule 23(c)); see also 725 ILCS 5/122-2.1(a)(2) (West 2020). This court vacated the circuit court's summary dismissal and remanded the matter for second-stage postconviction proceedings.

¶ 10 On January 18, 2023, defendant, through the same privately retained counsel, filed an amended postconviction petition with supporting affidavit. Counsel also filed a certificate in

compliance with Illinois Supreme Court Rule 651(c) (eff. July 1, 2017). In the amended petition, defendant asserted claims of actual innocence, various constitutional violations, and ineffective assistance of counsel. Defendant alleged he was unfit to enter his guilty plea because he was suffering from depression, was taking medication, and was under duress, and that the court violated due process by failing to order a fitness hearing. He further claimed ineffective assistance of trial counsel on multiple grounds, argued that his plea and sentence were voidable, asserted that he was not properly admonished regarding his right to a bench trial, and claimed that he was denied the benefit of his plea agreement.

¶ 11 The petition alleged that the delay in filing was not due to defendant's culpable negligence because he made substantial efforts to obtain the documents necessary to prepare his postconviction petition within the limitations period. Specifically, defendant claimed that he contacted his former attorney, the trial judge, the State's Attorney, and the court reporter to obtain the relevant records, but was unsuccessful. According to defendant, the judge and State's Attorney referred him to counsel, counsel told him he had no documents, and the court reporter was likewise unable to provide the requested materials.

¶ 12 The State filed a motion to dismiss the petition. Following a hearing, the circuit court granted the motion and dismissed the amended petition, noting that "[p]ursuant to 725 ILCS 5/122-1(c), a post-conviction petition shall be filed no later than 3 years from the date of conviction, unless the petitioner alleges facts showing that the delay was not due to his or her culpable negligence." The court acknowledged that the limitation did not apply to a petition advancing a claim of actual innocence. The circuit court held that defendant failed to allege facts establishing that his delay was not due to his own culpable negligence and that the petition did not set forth a viable claim of actual innocence. Defendant filed a timely notice of appeal.

¶ 13

II. ANALYSIS

¶ 14 On appeal, defendant argues that postconviction counsel provided unreasonable assistance by misapprehending the law and failing to raise a clear constitutional violation.

¶ 15 The Act establishes a process by which a criminal defendant may collaterally challenge their conviction or sentence for alleged violations of constitutional rights during trial or sentencing. See *People v. Whitfield*, 217 Ill. 2d 177, 183 (2005). Postconviction proceedings are limited to constitutional issues that were not, and could not have been, adjudicated on direct appeal. *People v. Ortiz*, 235 Ill. 2d 319, 328 (2009).

¶ 16 The Act sets forth a three-stage process for adjudicating postconviction petitions. *People v. English*, 2013 IL 112890, ¶ 23. At the first stage, the trial court independently reviews the petition and may summarily dismiss it if it is frivolous or patently without merit. 725 ILCS 5/122-2.1(a)(2) (West 2022); *People v. Edwards*, 197 Ill. 2d 239, 244 (2001).

¶ 17 This case was initially dismissed at the first stage by the circuit court, but this court reversed and remanded the matter for second-stage proceedings. On remand, defendant remained represented by retained counsel, who had filed the initial postconviction petition.

¶ 18 At the second stage, the court may appoint counsel for an indigent defendant, who may amend the petition as necessary, and the State may file a motion to dismiss or an answer to the petition. 725 ILCS 5/122-4, 122-5 (West 2022). At the second stage, if the defendant makes a substantial showing of a constitutional violation, the petition advances to the third stage where the trial court conducts an evidentiary hearing. *People v. Cotto*, 2016 IL 119006, ¶ 27.

¶ 19 The right to counsel in postconviction proceedings is not constitutionally guaranteed; rather, it arises solely from the Act. *Id.* ¶ 28; see also *People v. Addison*, 2023 IL 127119, ¶ 19. However, our supreme court has held that the Act entitles petitioners to a “reasonable” level of

assistance at every stage of postconviction proceedings. *People v. Williams*, 2025 IL 129718, ¶ 43; *Cotto*, 2016 IL 119006, ¶ 30.

¶ 20 Illinois Supreme Court Rule 651(c) generally serves as a mechanism to ensure reasonable assistance, which requires postconviction counsel to consult with the petitioner, examine the record of the trial proceedings, and make amendments to the petition necessary to advance the petitioner’s claims. Ill. S. Ct. R. 651(c) (eff. July 1, 2017).

¶ 21 However, compliance with Rule 651(c) is required only when the initial petition was filed *pro se*. See *Cotto*, 2016 IL 119006, ¶ 41; *People v. Mitchell*, 189 Ill. 2d 312, 358 (2000); *People v. Richmond*, 188 Ill. 2d 376, 383 (1999). Where private counsel is retained and files the initial petition, Rule 651(c) does not apply, though counsel must still provide reasonable assistance. *People v. Smith*, 2022 IL 126940, ¶ 32; *People v. Urzua*, 2023 IL 127789, ¶ 24.

¶ 22 Where, as here, retained counsel drafts the petition initiating the proceedings, thereby rendering Rule 651(c) inapplicable, courts have applied a “*Strickland*-like analysis” to determine whether postconviction counsel’s performance was “reasonable.” See *People v. Zareski*, 2017 IL App (1st) 150836, ¶¶ 58-61; *People v. Netter*, 2024 IL App (5th) 230112-U, ¶ 37; *People v. Perez*, 2023 IL App (4th) 220280, ¶ 54. Under this framework, a petitioner must establish both deficient performance by postconviction counsel and resulting prejudice—that is, a “reasonable probability that, but for counsel’s errors, the result of the [postconviction] proceeding would have been different.” *People v. Ayala*, 2022 IL App (1st) 192484, ¶ 162; *People v. Hughes*, 2012 IL 112817, ¶ 44.

¶ 23 Defendant, in his reply brief, urges this court to reject the *Strickland* standard set forth in *People v. Zareski*, 2017 IL App (1st) 150836, ¶ 59, and instead adopt an approach, under which once a court determines that privately retained postconviction counsel provided unreasonable

assistance, the petitioner is entitled to a remand for further proceedings without having to show additional prejudice. Defendant contends that requiring a showing of prejudice creates an unwarranted disparity between petitioners who file an initial *pro se* petition and those who retain counsel to prepare and file their initial petition.

¶ 24 We decline to adopt defendant's proposed approach. Rule 651(c) does not apply when privately retained counsel prepares and files the initial postconviction petition. *Richmond*, 188 Ill. 2d at 383. Accordingly, the specific duties imposed by Rule 651(c), and the consequences that follow from counsel's failure to substantially comply with those duties, do not govern the performance of privately retained counsel in this circumstance. In *Zareski*, the First District addressed the resulting question of how to evaluate the reasonableness of privately retained postconviction counsel and adopted the *Strickland* analysis, requiring the petitioner to establish both unreasonable assistance and resulting prejudice. *Zareski*, 2017 IL App (1st) 150836, ¶ 59.

¶ 25 Our supreme court's recent decisions in *People v. Williams*, 2025 IL 129718, and *People v. Carroll*, 2026 IL 131360, do not compel a different result. The appellate courts in both cases relied on *Zareski* in evaluating postconviction counsel's performance. *Carroll*, 2024 IL App (4th) 231207, ¶¶ 64-65; *Williams*, 2023 IL App (5th) 220185-U, ¶¶ 18-20. Although the supreme court had the opportunity to address *Zareski* in those cases, it did not disapprove of the decision or its *Strickland*-like approach. Instead, in both cases, the supreme court affirmed the dismissal of the postconviction petitions, concluding that counsel had not provided unreasonable assistance. *Carroll*, 2026 IL 131360, ¶¶ 87-90; *Williams*, 2025 IL 129718, ¶¶ 49-50. We recognize that neither decision expressly holds that a petitioner represented by privately retained postconviction counsel must establish prejudice. Nevertheless, in the absence of contrary supreme court authority, we

agree with the State that *Zareski* provides the appropriate framework for evaluating privately retained postconviction counsel's performance.

¶ 26 Defendant's reliance on *Addison*, 2023 IL 127119, does not alter our conclusion. In *Addison*, the supreme court held that remand was required where postconviction counsel failed to comply with Rule 651(c) in amending the defendant's *pro se* petition, regardless of the merits of the claims raised. *Id.* ¶¶ 37, 44. The court explained that postconviction petitioners are entitled to have counsel comply with the limited duties imposed by Rule 651(c) before the merits of their claims are considered. *Id.* ¶ 37. Defendant contends that this holding is difficult to reconcile with *Richmond*, because *Addison* states that "all" postconviction petitioners are entitled to have counsel comply with Rule 651(c), while *Richmond* holds that Rule 651(c) does not apply when privately retained counsel prepares and files the initial petition. We need not resolve any broader tension between those statements because *Addison* involved an initial *pro se* petition and counsel whose performance was governed by Rule 651(c). Here, defendant did not file an initial *pro se* petition; privately retained counsel prepared and filed the initial petition. Thus, Rule 651(c) is inapplicable under *Richmond*, and *Addison* does not establish that defendant is entitled to the remedy applicable to a violation of Rule 651(c).

¶ 27 Nor are we persuaded by defendant's contention that applying a prejudice requirement creates an unwarranted disparity between similarly situated petitioners. The difference in treatment results from the different procedural circumstances under which counsel becomes involved and, consequently, from the applicability of Rule 651(c). Defendant identifies no authority requiring the Rule 651(c) framework or its corresponding remedy to be extended to cases in which privately retained counsel prepares and files the initial petition. We therefore apply the *Strickland*-like

standard articulated in *Zareski*. That is, defendant must establish both unreasonable assistance and resulting prejudice.

¶ 28 Whether counsel provided a reasonable level of assistance depends on the particular facts and circumstances of each case, which we review *de novo*. *Williams*, 2025 IL 129718, ¶ 41. With this in mind, we consider defendant's specific arguments on appeal.

¶ 29 1. Failure to Raise an Issue Apparent on Record

¶ 30 Defendant first argues that postconviction counsel provided unreasonable assistance by failing to recognize and raise a purported constitutional violation in either the initial or amended petition. Specifically, defendant asserts that postconviction counsel failed to include a claim that he was denied his right to counsel at a critical stage when the circuit court denied his *pro se* motion to reduce his sentence without appointing counsel.

¶ 31 Defendant cannot establish unreasonable assistance merely by identifying a constitutional claim that postconviction counsel did not raise. Under *Williams*, the relevant inquiry is whether counsel's performance was objectively unreasonable under the circumstances, not whether counsel pursued every conceivable argument or whether the claims counsel did pursue were ultimately successful. *Id.* ¶¶ 43, 49. Counsel does not render unreasonable assistance by declining to raise a claim that lacks merit. *Id.* Accordingly, the question is whether defendant's proposed claim was sufficiently viable that counsel's failure to raise it constituted unreasonable assistance and, if so, whether defendant suffered prejudice as a result.

¶ 32 Defendant's proposed claim fails because the record supports the conclusion that defendant remained represented by counsel when he filed his *pro se* motion to reduce his sentence on April 20, 2005. The common-law record reflects that, on June 29, 2004, the circuit court entered an order appointing the public defender and setting further proceedings. A July 7, 2004, arraignment entry

further reflects that “SA, DF, and Attorney Capps [were] present,” with Attorney Timothy Capps serving as defendant’s counsel. On June 16, 2005, Attorney Capps filed a petition for fees and expenses that itemized legal services rendered through April 4, 2005, and certified that the listed services were rendered through April 2005. The common-law record contains no intervening order or entry reflecting Attorney Capps’s withdrawal, substitution of counsel, or defendant’s election to proceed *pro se* before defendant filed his motion on April 20, 2005. Although no contemporaneous entry expressly identifies Attorney Capps as counsel of record on April 20, these circumstances support the conclusion that Attorney Capps continued to represent defendant at the time defendant filed his *pro se* motion.

¶ 33 A defendant who is represented by counsel has no right to simultaneously proceed *pro se* and through counsel. *People v. Handy*, 278 Ill. App. 3d 829, 836 (1996). Rather, a defendant must choose between proceeding *pro se* and being represented by counsel. *Id.* Accordingly, when a represented defendant files a *pro se* motion that does not allege ineffective assistance of trial counsel, the motion is not properly before the court, and the circuit court is not required to consider it. *People v. Serio*, 357 Ill. App. 3d 806, 815 (2005); *People v. Rucker*, 346 Ill. App. 3d 873, 882 (2003). Because the record supports the conclusion that defendant remained represented by counsel when he filed his motion, he was not entitled to the appointment of additional counsel to litigate that motion. His claim that he was denied his right to counsel at a critical stage lacks merit.

¶ 34 Because the claim lacks merit, defendant has not shown that postconviction counsel acted unreasonably by failing to raise it. Nor has defendant established prejudice, as he cannot demonstrate a reasonable probability that raising the claim would have changed the outcome of the postconviction proceedings. Accordingly, we reject defendant’s claim that postconviction

counsel provided unreasonable assistance by failing to raise the claim that he was denied his right to counsel at a critical stage.

¶ 35

2. Failure to Examine the Record

¶ 36 Defendant next contends that postconviction counsel's failure to raise the sixth amendment claim demonstrates that counsel failed to adequately examine the record. Defendant asserts that counsel's omission is evidence that counsel did not review the report of proceedings and common-law record because, had counsel done so, he would have identified the alleged constitutional violation. Defendant then points to what he characterizes as "one other indicator" of counsel's failure to review the record: counsel's Rule 651(c) certificate, which states that counsel examined "the trial court file and the partial report of proceeding[s] of the plea of guilty and sentence which have been obtained." Defendant argues that this statement is inaccurate because, while the record contains a partial report of proceedings for the plea, no report of proceedings exists for the sentencing hearing.

¶ 37 We are unpersuaded. Defendant's argument assumes that counsel's failure to raise the sixth amendment claim demonstrates that counsel failed to review the record. It does not. As discussed above, defendant's proposed sixth amendment claim lacks merit because defendant was represented by counsel when he filed his *pro se* motion to reduce his sentence and therefore was not constitutionally entitled to the appointment of additional counsel. See *Handy*, 278 Ill. App. 3d at 836; *Serio*, 357 Ill. App. 3d at 815; *Rucker*, 346 Ill. App. 3d at 882. Counsel's failure to raise a meritless claim therefore does not, without more, establish that counsel failed to examine the record or otherwise rendered unreasonable assistance.

¶ 38 Nor does the language of the certificate establish unreasonable assistance. Although Rule 651(c) does not apply here, defendant relies on the certificate as evidence that counsel did not

actually review the record. To the extent defendant contends that counsel's reference to a "partial report of proceeding[s] of the plea of guilty and sentence" was inaccurate because no sentencing transcript exists, we need not determine whether the certificate could have been more precisely worded. Even assuming the certificate was inaccurate, that does not establish unreasonable assistance because Rule 651(c) does not apply, and defendant has not shown what additional record review would have uncovered. The discrepancy therefore does not establish that counsel's actual performance was objectively unreasonable.

¶ 39 Moreover, defendant cannot establish prejudice. The sixth amendment claim that defendant contends counsel should have discovered and raised is meritless for the reasons discussed above. Defendant was represented by counsel when he filed his *pro se* motion and was not entitled to hybrid representation or the appointment of additional counsel. Thus, even assuming counsel's review of the record was imperfect, defendant has not demonstrated a reasonable probability that a more thorough review would have resulted in a viable sixth amendment claim or a different outcome in the postconviction proceedings. Accordingly, defendant has failed to establish that postconviction counsel provided unreasonable assistance.

¶ 40 3. Misrepresentation of the Law

¶ 41 Defendant also argues that postconviction counsel provided unreasonable assistance by advancing, in the amended petition, what defendant characterizes as a legally baseless claim that his guilty plea was unknowing because he was taking psychotropic medication at the time of the plea.

¶ 42 Defendant emphasizes that counsel cited section 104-21(a) of the Code of Criminal Procedure of 1963 (725 ILCS 5/104-21(a) (West 1996)) for the proposition that defendants

receiving psychotropic medication are entitled to a fitness hearing, even though Illinois law has long provided that the use of psychotropic medication does not create a presumption of unfitness.

¶ 43 Defendant's argument, however, evaluates counsel's performance with the benefit of hindsight. Under *Williams*, 2025 IL 129718, the question is not whether counsel's arguments were ultimately successful or whether counsel relied on the strongest possible legal theory, but whether counsel's performance was objectively unreasonable under the circumstances. *Id.* ¶¶ 43, 49. In evaluating counsel's performance, we consider the arguments and factual allegations as a whole rather than isolating a single legal proposition from the remainder of the claim. Thus, the fact that counsel relied on an outdated interpretation of section 104-21(a) does not, standing alone, establish unreasonable assistance.

¶ 44 Here, counsel did not rely solely on the language of section 104-21(a) to support the claim that defendant's plea was involuntary. The amended petition presented several independent factual grounds to support the assertion that the defendant was mentally unfit at the time of the plea, including (1) plea counsel's coercive prediction that proceeding to trial would result in a life sentence; (2) defendant's suicide attempt while in custody in 2004; (3) defendant's extensive history of mental illness, beginning in childhood; (4) diagnoses of acute stress disorder and adjustment disorder with depressed mood; (5) frequent placements on suicide watch and urgent consultations with mental health professionals; and (6) defendant's ongoing reports of nightmares and persistent insomnia. These allegations provided a factual basis for counsel's argument that defendant's mental condition affected the voluntariness of his plea, independent of counsel's interpretation of section 104-21(a).

¶ 45 Defendant therefore has not shown that counsel's reliance on section 104-21(a), even if legally erroneous, rendered counsel's overall performance unreasonable. Counsel identified a

particular legal theory and supported it with specific allegations concerning defendant's mental health and condition at the time of the plea. The fact that counsel could have framed the claim differently or avoided reliance on the statutory language defendant now challenges does not establish unreasonable assistance.

¶ 46 Moreover, defendant cannot establish prejudice because the circuit court dismissed the amended petition on independent grounds. The State moved to dismiss under section 122-1(c) of the Act, which generally requires a postconviction proceeding to be commenced within three years of the conviction unless the petitioner alleges facts showing that the delay was not due to his culpable negligence. The circuit court found that defendant had alleged no facts establishing that his more-than-15-year delay was not due to his own culpable negligence. The court also considered defendant's freestanding claim of actual innocence and found that it was not supported by newly discovered evidence and did not present new, noncumulative evidence sufficient to likely result in an acquittal. Defendant does not challenge either of these determinations on appeal. Thus, even if postconviction counsel had omitted the challenged psychotropic-medication argument, presented it under a different legal theory, or raised defendant's proposed sixth amendment claim, defendant has not shown a reasonable probability that the outcome of the postconviction proceeding would have been different.

¶ 47 Accordingly, although counsel's interpretation of section 104-21(a) of the Code of Criminal Procedure of 1963 was incorrect, the record does not establish that counsel's overall approach was objectively unreasonable. Counsel advanced a factually supported claim challenging the voluntariness of defendant's plea, and defendant has not demonstrated either unreasonable assistance or resulting prejudice.

¶ 48 Defendant has therefore failed to establish that postconviction counsel provided unreasonable assistance. His proposed sixth amendment claim was meritless, his assertions concerning counsel's review of the record and the Rule 651(c) certificate do not demonstrate deficient performance, and counsel's reliance on superseded statutory language concerning psychotropic medication, considered in the context of the claim as a whole, does not establish unreasonable assistance or prejudice. We therefore conclude that the circuit court properly dismissed defendant's petition at the second stage of postconviction proceedings.

¶ 49

III. CONCLUSION

¶ 50 For the foregoing reasons, we affirm the judgment of the circuit court of Massac County.

¶ 51 Affirmed.