NOTICE
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2026 IL App (5th) 241201-U

NO. 5-24-1201

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,	)	Champaign County.
	)	
v.	)	No. 13-CF-1517
	)	
LYNNTEZ HOLT,	)	Honorable
	)	Randall B. Rosenbaum,
Defendant-Appellant.	)	Judge, presiding.

JUSTICE VAUGHAN delivered the judgment of the court.
Presiding Justice Cates and Justice Barberis concurred in the judgment.

ORDER

¶ 1 *Held*: Where postconviction counsel failed to comply with Illinois Supreme Court Rule 651(c) (eff. July 1, 2017), we reverse the dismissal of defendant's postconviction petition and remand for new second-stage proceedings with new postconviction counsel.

¶ 2 Defendant, Lynntez Holt, appeals the dismissal of his postconviction petition, arguing that second postconviction counsel failed to comply with Illinois Supreme Court Rule 651(c) (eff. July 1, 2017) and this court's previous mandate in *People v. Holt*, 2024 IL App (5th) 220152-U. For the following reasons, we reverse and remand.

¶ 3 I. BACKGROUND

¶ 4 After a jury trial, defendant was found guilty of aggravated discharge of a firearm (720 ILCS 5/24-1.2(a)(2) (West 2012)) and aggravated battery with a firearm (*id.* § 24-1.6(a)(3)(A)) for

events that occurred on September 1, 2013. The trial court sentenced defendant to 20 years' imprisonment for aggravated battery with a firearm and a concurrent term of 15 years for aggravated discharge of a firearm. On appeal, the Fourth District affirmed the aggravated battery with a firearm conviction, vacated the discharge of a firearm conviction under one-crime one-act principles, and remanded the cause for a new sentencing hearing. *People v. Holt*, 2017 IL App (4th) 141047-U, ¶ 54.

¶ 5 On October 1, 2018, defendant filed a *pro se* motion for leave to file a "delayed" postconviction petition, along with a postconviction petition. The motion requested leave to file a postconviction petition 198 days beyond the statutory time limitation. The motion argued that defendant's delayed filing was not due to his culpable negligence where he was without legal representation or adequate law library resources. It further stated defendant worked hard and did his best to present his arguments within the allotted time frame.

¶ 6 The postconviction petition alleged trial counsel was ineffective for failing to tender or request an instruction for the lesser included offense of recklessness and failing to consult with defendant on the charges and plea negotiations. The petition recounted the procedural posture of the case and stated defendant submitted the petition "for good cause." Defendant's affidavit was attached to the petition, among other documents. The affidavit stated that trial counsel rejected defendant's offer to plead guilty and trial counsel failed to tender instructions on lesser included offenses although counsel knew defendant would have accepted the lesser included offense if afforded the opportunity. It further stated counsel failed to consider whether defendant's actions constituted recklessness under the law.

¶ 7 On October 29, 2018, the circuit court denied the motion for leave to file a delayed postconviction petition. The Fourth District appellate court reversed and remanded with

instructions that defendant's petition should proceed to a second-stage proceeding where postconviction counsel should be appointed. *People v. Holt*, No. 4-19-0022 (2020) (unpublished summary order under Illinois Supreme Court Rule 23(c)).

¶ 8 Defendant's first postconviction counsel was appointed in January 2021. Thereafter, first postconviction counsel was granted several continuances to prepare an amended petition. In the meantime, on December 6, 2021, the State moved to dismiss the petition on grounds including untimeliness, *res judicata*, and procedural default.

¶ 9 On January 20, 2022, first postconviction counsel filed an amended petition, which acknowledged that the *pro se* petition was untimely but did not address the issues of timeliness or procedural default of defendant's claims. The amended petition asserted the same claims as the *pro se* petition, as well as a claim alleging trial counsel was ineffective for failing to object to the removal of defendant's family during *voir dire*. The petition also explained why postconviction counsel did not attach an affidavit from trial counsel or defendant. Attached to the petition were transcripts and defendant's previous affidavit.

¶ 10 The State filed an addendum to its motion to dismiss, again asserting, *inter alia*, untimeliness and procedural default. On February 15, 2022, postconviction counsel filed an affidavit from defendant. In the affidavit, defendant stated that he asked trial counsel to request the lesser included offense instruction despite defendant informing trial counsel of evidence of the lesser included charge of reckless discharge. He further stated he asked trial counsel about the instruction and trial counsel refused to request the instruction. Defendant also said that the judge removed his family from the courtroom during *voir dire*.

¶ 11 On February 22, 2022, the court filed an order denying defendant's postconviction petition. Regarding the timeliness issue, the court stated that defendant did not outline any specific facts

such as the dates and times he requested access to the library but was denied access or what was so complex about his claims. It noted that proving lack of culpable negligence is difficult and defendant had no legal right to counsel or the assistance of a certified assistant. The court found his claims were simple and known to him at the time of trial, *i.e.*, he wanted the lesser included instruction and his family was removed during *voir dire*. It therefore found defendant failed to show the untimeliness was not due to his own culpable negligence and granted the State's motion to dismiss. It further found defendant's claims were procedurally defaulted and he failed to make a substantial showing of a constitutional violation.

¶ 12 The dismissal was reversed on appeal due to postconviction counsel's failure to comply with Rule 651(c). *People v. Holt*, 2024 IL App (5th) 220152-U. Specifically, this court found that postconviction counsel failed to make all the necessary amendments for adequate presentation of defendant's claims where postconviction counsel did not make any allegations that the delayed filing was not due to defendant's culpable negligence or to avoid procedural default by asserting appellate counsel was ineffective for failing to raise trial counsel's ineffectiveness on direct appeal. *Id.* ¶¶ 19-20. As such, we vacated "the trial court's dismissal of the defendant's amended postconviction petition and remand[ed] this cause to the trial court for new second-stage proceedings with the appointment of new postconviction counsel who should comply with Rule 651(c)." *Id.* ¶ 21.

¶ 13 On May 13, 2024, the court appointed second postconviction counsel, Elisabeth Pollock, for defendant. On May 31, 2024, second postconviction counsel sought, via a subpoena *duces tecum*, defendant's prison records from the Illinois Department of Corrections (IDOC) for a date range starting on January 13, 2017, when this court ruled on defendant's direct appeal, and ending on October 1, 2018, when defendant's *pro se* petition was file-stamped in the circuit court.

Second postconviction counsel sought records including, but not limited to, all call slips requesting access to the law library, any grievances concerning defendant's access to the law library, and records of the number of trips he took to the law library. Second postconviction counsel also requested a list of any and all employees, whether inmate or civilian, working in the law library during the same time frame.

¶ 14 After receiving two continuances to file an amended petition, second postconviction counsel filed a motion to withdraw as counsel on August 2, 2024, on the basis that there was no nonfrivolous argument to excuse the untimeliness of defendant's petition. Counsel explained there was no precedent in Illinois to support finding an absence of culpable negligence due to limited access to a law library. Moreover, based on the defendant's records she received from IDOC, there were no filed grievances regarding the law library. Second postconviction counsel further stated the documents reported 36 requests to visit the law library but only one request between the resolution of defendant's appeal on January 13, 2017, and November 24, 2017,[1] which was the last date that defendant could file a timely postconviction petition. The remaining visits occurred between January 4, 2018, and December 21, 2018. Second postconviction counsel stated that under *People v. Greer*, 212 Ill. 2d 192, 205 (2004), she was required to withdraw where she could not in good faith find a reason to excuse defendant's untimely filing of defendant's petition. The motion further stated that it

> "did not address the ineffective assistance of [trial] counsel claim because defendant's petition was untimely, and defendant's culpable negligence is not excusable. The Post-Conviction Hearing Act does not contemplate any excuse for

[1]On appeal, the parties seemingly agree there was a miscalculation below and the last day defendant could have timely filed his postconviction petition was February 22, 2018. This miscalculation, however, has no impact on the issues presented on appeal.

> untimeliness besides excusable culpable negligence. Thus, any claims of ineffective assistance of counsel are barred by the untimeliness of the post-conviction petition."

¶ 15 According to IDOC documents attached to the motion to withdraw as counsel, defendant visited the "law library" on January 24, 2017. Thereafter, defendant requested six passes to the "library," not the "law library," for appointments occurring between January 4, 2018, and February 13, 2018. More than a year after his first "law library" visit, his second "law library" pass was requested on February 28, 2018, for an appointment date of March 1, 2018. Defendant returned to the law library numerous times thereafter.

¶ 16 On August 28, 2024, the State filed a motion to dismiss, again raising the timeliness and procedural default issues, as well as the factual and legal sufficiency of defendant's claims. A docket entry dated September 26, 2024, noted that postconviction counsel did not intend to reply to the motion to dismiss.

¶ 17 The circuit court held a hearing on the motion to withdraw and the State's motion to dismiss on November 6, 2024. Second postconviction counsel stood on her motion. When asked if defendant had a reply to the motion to withdraw as counsel, defendant stated, "As far as the timeliness, no, but as far as the merit, I don't recall her ever telling me that aspect." Defendant reiterated that he believed his claims had merit. The court stated that second postconviction counsel's position was that the initial issue was the timeliness of the petition. The court found second postconviction counsel's motion was well-taken, found there was no merit in arguing the untimely petition was not due to defendant's culpable negligence, and granted the motion to withdraw.

¶ 18 The State then raised concern that second postconviction counsel had not filed a Rule 651(c) certificate. The court swore in second postconviction counsel, listed the specific duties required by Rule 651(c), and asked postconviction counsel if she completed those duties. Second postconviction counsel stated,

> "Your Honor, I did consult with [defendant] as to all of the issues he wished to raise. I did conduct an investigation at his request in an effort to supplement and or present his claims in a non-frivolous manner. My reading of [Rule] 651 was that I was to file that certificate if I amended his *pro se* post-conviction petition and say that I have raised all of the claims that he wished to raise. I did not read it to be required in the instance of a motion to withdraw. However, I did do all of the requirements of me under Rule 651."

¶ 19 The court agreed, stating, "I think it applies if you file an amended petition." The court then found that while the rule stated that the record shall contain a showing of compliance through a certificate, it made the appropriate findings on the record. It then proceeded with the State's motion to dismiss. Defendant declined the opportunity to obtain counsel to represent him on the State's motion to dismiss. He argued that he believed his claims had merit and that his constitutional rights were violated numerous times. He contended that he should have the opportunity to have an evidentiary hearing regardless of the untimeliness where his constitutional rights were violated on numerous occasions.

¶ 20 The circuit court found the initial issue was timeliness and asked defendant if he could explain why the delayed filing was not his fault. Defendant stated he worked diligently in filing the petition and he thought he had three years to file instead of six months. He stated that second

postconviction counsel's subpoena to IDOC was incomplete because it omitted the relevant months before his petition was due in November 2017.

¶ 21 The court stated it was clear that defendant's postconviction petition was due on November 24, 2017, and defendant filed on October 1, 2018. It found that postconviction counsel's exhibits showed that defendant had opportunities to go to the law library and there was no lockdown. It noted that regardless, caselaw held that lockdowns were not sufficient justification for untimely petitions. The court stated that regardless of defendant's incorrect beliefs, he filed his petition too late. It granted the motion to dismiss on that basis. It then also agreed with the State's contentions that defendant's allegations were insufficient, and many claims could have been raised on direct appeal. Defendant timely appealed, challenging second postconviction counsel's representation.

¶ 22 II. ANALYSIS

¶ 23 The Post-Conviction Hearing Act (Act) (725 ILCS 5/122-1 *et seq.* (West 2022)) provides a three-stage process wherein defendants may collaterally challenge their convictions and/or sentences for substantial violations of their federal or state constitutional rights. *People v. Whitfield*, 217 Ill. 2d 177, 183 (2005). At the first stage, the circuit court must review the defendant's petition within 90 days of its filing and will dismiss a petition only if it is "frivolous or is patently without merit." 725 ILCS 5/122-2.1(a)(2) (West 2022); *People v. Hodges*, 234 Ill. 2d 1, 9-11 (2009). If the petition is not dismissed, the petition advances to second-stage proceedings at which time the court may appoint counsel for an indigent defendant. *People v. Cotto*, 2016 IL 119006, ¶¶ 26-27.

¶ 24 The right to counsel in a postconviction proceeding is statutory, not constitutional. *People v. Pinkonsly*, 207 Ill. 2d 555, 567 (2003). A postconviction defendant is therefore only entitled to

a reasonable level of assistance as provided by the Act. *People v. Turner*, 187 Ill. 2d 406, 410 (1999).

¶ 25 Illinois Supreme Court Rule 651(c) (eff. July 1, 2017) outlines the steps postconviction counsel must take to provide reasonable assistance. Specifically, Rule 651(c) requires postconviction counsel to (1) consult with petitioner to ascertain his or her contentions of deprivation of constitutional rights, (2) examine the record of the proceedings at the trial, and (3) make any amendments to the *pro se* petition that are necessary for an adequate presentation of petitioner's contentions. Ill. S. Ct. R. 651(c) (eff. July 1, 2017).

¶ 26 On appeal, defendant argues second postconviction counsel violated this court's prior mandate, as well as failing to comply with Rule 651(c). We agree.

¶ 27 A reviewing court's mandate vests a circuit court with jurisdiction, but the circuit court's authority is limited to the scope of the mandate and the court " 'must obey precise and unambiguous directions on remand.' " *In re Marriage of Jones*, 2019 IL App (5th) 180388, ¶ 23 (quoting *McDonald v. Lipov*, 2014 IL App (2d) 130401, ¶ 44). The correctness of the actions on remand is "determined from the appellate court's mandate, as opposed to the appellate court opinion." *Id.*

¶ 28 Defendant argues that postconviction counsel violated the mandate in *People v. Holt*, 2024 IL App (5th) 220152-U, ¶¶ 18-19, by failing to amend the petition to allege available facts necessary to address the timeliness and procedural default issues and abdicating her role. Our mandate, however, was not so specific. While this court found first postconviction counsel failed to comply with Rule 651(c) by failing to amend the petition to address timeliness and procedural default, this court did not require newly appointed counsel to allege any particular facts or claims. Rather, our mandate required the circuit court to hold new second-stage proceedings after

appointing new postconviction counsel, who should comply with Rule 651(c). *Id.* ¶ 21. Thus, newly appointed counsel violated this court's mandate only if counsel failed to comply with Rule 651(c).

¶ 29 Compliance with Rule 651(c) may be shown "by the certificate of petitioner's attorney." Ill. S. Ct. R. 651(c) (eff. July 1, 2017). In the absence of such certificate, however, the record must demonstrate counsel adequately fulfilled the required duties. *People v. Lander*, 215 Ill. 2d 577, 584 (2005). If the record shows counsel failed to meet one of Rule 651(c)'s requirements, the presumption is rebutted and there is no compliance with Rule 651(c). See *People v. Johnson*, 154 Ill. 2d 227, 248-50 (1993). Failure to comply with Rule 651(c) requires reversal regardless of whether the petition's claims are meritless. *People v. Addison*, 2023 IL 127119, ¶ 33. We review whether postconviction counsel substantially complied with Rule 651(c) *de novo*. *People v. Frey*, 2024 IL 128644, ¶ 21.

¶ 30 The parties here only dispute the third requirement of Rule 651(c) that requires postconviction counsel to make all amendments necessary to adequately present defendant's claims. Ill. S. Ct. R. 651(c) (eff. July 1, 2017). Specifically, the parties dispute whether postconviction counsel was required to amend the substantive merits of defendant's claims despite having no meritorious argument to excuse the untimely filing of the petition.

¶ 31 The purpose of Rule 651(c) is to ensure that postconviction counsel presents defendant's claims to the court after they are shaped into proper legal form. *People v. Perkins*, 229 Ill. 2d 34, 43-44 (2007). An amendment that only furthers a frivolous or patently nonmeritorious claim is not "necessary" under Rule 651(c). *People v. Greer*, 212 Ill. 2d 192, 205 (2004). One example of a necessary amendment is ensuring all elements of a claim are alleged in the petition. See *Turner*, 187 Ill. 2d at 413; *People v. Wessling*, 2025 IL App (5th) 230378-U, ¶ 22 (collecting cases). Other

necessary amendments include attempting to avoid procedural bars, including amending an ineffective assistance of trial counsel claim that could have been addressed on direct appeal to an ineffective assistance of appellate counsel in failing to raise trial counsel's ineffectiveness. See *Turner*, 187 Ill. 2d at 414; *Addison*, 2023 IL 127119, ¶ 27; *Perkins*, 229 Ill. 2d at 44.

¶ 32 Citing *People v. Lander*, 215 Ill. 2d 577, 579-82 (2005), defendant argues that postconviction counsel was required to make the proper amendments to the merits of his contentions even when there was no meritorious argument to excuse the untimeliness of the petition. The State contends that *Lander* is distinguishable because the postconviction counsel in *Lander* did not file a Rule 651(c) certificate; whereas second postconviction counsel swore that she complied with Rule 651(c) and the record here did not rebut that compliance.

¶ 33 The State asserts second postconviction counsel completed the Rule 651(c) duties pursuant to *Perkins*, 229 Ill. 2d at 43, which held that when faced with an untimely petition, Rule 651(c) only required second postconviction counsel to either obtain the State's waiver or attempt to allege facts showing a lack of culpable negligence. Citing *Greer*, 212 Ill. 2d at 209, it further contends second postconviction counsel could not present frivolous claims and she explained why she could not allege facts to show an absence of culpable negligence in her motion to withdraw. It argues second postconviction counsel did not obtain the State's waiver or forfeiture of the argument due to the State repeatedly asserting the defenses in its prior motions to dismiss. Alternatively, it contends any error was harmless and second postconviction counsel's motion complied with the judicial economy principles and broader principles set forth in *People v. Frey*, 2024 IL 128644, ¶ 27.

¶ 34 In *Lander*, the defendant filed an untimely *pro se* postconviction petition and a motion for leave to file a late petition. *Lander*, 215 Ill. 2d at 580. In the motion, the defendant contended that

based on his conversations with a prison law clerk and several jailhouse lawyers, he believed he was allowed three years from the last court decision to file a postconviction petition and that his previously filed affidavits constituted postconviction petitions. *Id.* The circuit court found the postconviction petition was not frivolous or patently without merit, docketed the case for second-stage proceedings, and appointed postconviction counsel. *Id.* The appointed counsel filed two amended motions for leave to file a postconviction petition, but the postconviction petition was never amended. *Id.* at 581-82. The circuit court eventually dismissed the postconviction petition as untimely. *Id.* at 582. On appeal, the defendant argued that the postconviction counsel failed to comply with Rule 651(c) and that he alleged sufficient facts to establish the delay in filing his petition was not due to his culpable negligence. *Id.* The appellate court found Rule 651(c)'s consultation requirement did not apply, and the merits of the petition did not need addressed by the postconviction counsel until the postconviction counsel successfully obtained leave to file an untimely postconviction petition. *Id.*

¶ 35 The Illinois Supreme Court disagreed and found that postconviction counsel must "comply with Rule 651(c) despite the untimeliness of defendant's *pro se* petition." *Id.* at 584. It reasoned,

> "the time requirement for filing a postconviction petition is considered an affirmative defense that may be raised, waived, or forfeited by the State. [Citation.] A dutiful prosecutor may waive this defense at the second stage of the postconviction proceedings if an untimely petition demonstrates the defendant suffered a deprivation of constitutional magnitude. [Citation.]
>
> *** A prosecutor would have no reason to waive this affirmative defense if a meritorious constitutional claim is not presented in the petition. In order to present defendant's constitutional claims adequately, postconviction counsel must

> fully comply with the requirements of Rule 651(c). Therefore, to assure the reasonable assistance of counsel mandated by the Act, postconviction counsel must comply with Rule 651(c) and submit defendant's substantive claims to the State to give the prosecutor an opportunity to determine whether they are sufficient to merit the State's waiver of the affirmative defense of untimeliness. Accordingly, the untimeliness of defendant's petition did not excuse postconviction counsel from fulfilling their duties under Rule 651(c)." *Id.* at 584-85.

¶ 36 The Illinois Supreme Court provided further explanation in *Perkins*, 229 Ill. 2d at 49, which found that Rule 651(c) requires postconviction counsel to amend an untimely *pro se* petition to allege any available facts necessary to establish that the delay was not due to the defendant's culpable negligence. In doing so, it stated that in cases of an untimely petition, to have any chance to present a defendant's constitutional claims at the second stage of proceedings, "it is necessary either to: (1) obtain the State's waiver or forfeiture of the untimeliness defense; or (2) attempt to overcome the time bar by alleging lack of culpable negligence in the late filing." *Id.* at 43. The *Perkins* court also discussed *Lander*, stating that *Lander* determined "whether Rule 651(c) required counsel to present the petitioner's constitutional claims adequately despite the untimeliness of the *pro se* petition." *Id.* at 46-47. It continued that the *Lander* court

> "held that petitioner's attorneys were required to comply with Rule 651(c) despite the untimeliness of the *pro se* petition. [Citation.] The holding in *Lander* was based on our decision in *Boclair*, establishing that the time requirement for filing a postconviction petition is an affirmative defense that may be raised, waived, or forfeited by the State at the second stage of the proceedings. [Citation.] We noted that a prosecutor would have no reason to waive the defense of untimeliness if a

> meritorious constitutional claim is not presented in the petition. [Citation.] We held that postconviction counsel must submit the petitioner's constitutional claims in compliance with Rule 651(c). The prosecutor may then decide whether those claims are sufficient to warrant the State's waiver of the affirmative defense of untimeliness. [Citation.] We remanded the matter to the circuit court for further proceedings because the record did not establish compliance with Rule 651(c)." *Perkins*, 229 Ill. 2d at 45-46.

¶ 37 The court further clarified that *Lander* determined Rule 651(c) requires amendment of the petition to present constitutional claims despite the timeliness of the petition and *Perkins* held that Rule 651(c) additionally requires postconviction counsel to allege available facts showing a lack of culpable negligence for untimely filings. See *Perkins*, 229 Ill. 2d at 47. Both of those actions are required by the plain language of Rule 651(c) requiring amendments necessary for an adequate presentation of a defendant's contentions. *Id.*

¶ 38 In light of the statements in *Lander* and *Perkins*, it is clear the State's position must fail, and that Rule 651(c) requires more than attempting to obtain the State's waiver of the timeliness defense or alleging facts demonstrating the lack of culpable negligence. Postconviction counsel was required to amend defendant's claims to proper legal form, regardless of the timeliness issues. *Id.* This is so because timeliness is an affirmative defense, which can be waived and forfeited by the State. See *id.* at 46. An affirmative defense does not negate the essential elements of a claim. *Vroegh v. J&M Forklift*, 165 Ill. 2d 523, 530 (1995). Moreover, "time is not an inherent element of the right to *bring* a post-conviction petition." (Emphasis in original.) *People v. Boclair*, 202 Ill. 2d 89, 101 (2002). Thus, although timeliness—alone—could preclude defendant from relief as a defense, the untimely filing does not render his substantive claims legally or factually meritless.

Accordingly, pursuant to *Lander* and *Perkins*, the untimeliness of defendant's *pro se* postconviction petition did not excuse postconviction counsel's duty to present his constitutional claims in proper legal form. *Lander*, 215 Ill. 2d at 585.

¶ 39 We further note second postconviction counsel was not required to withdraw under *Greer*, which found that a postconviction counsel could not ethically assert frivolous or patently unmeritorious claims. *Greer*, 212 Ill. 2d at 205. As just explained, the absence of facts demonstrating a lack of culpable negligence in defendant's late filing does not render his underlying claims legally or factually meritless, and second postconviction counsel did not argue defendant's substantive claims lacked merit. There was therefore no ethical requirement to withdraw.

¶ 40 As a whole, case law holds that when presented with an untimely *pro se* petition, a postconviction counsel may comply with Rule 651(c)'s third obligation by (1) asserting facts alleging a lack of culpable negligence in the delayed filing and making any further amendments as required to adequately present defendant's substantive claims, (2) making any amendments necessary to adequately present defendant's substantive claims then present those claims to the State for it to determine whether it will waive the defense of untimeliness (*Perkins*, 229 Ill. 2d at 43, 47), or (3) filing a motion to withdraw explaining why defendant's substantive claims lack merit (*People v. Urzua*, 2023 IL 127789, ¶ 33). No situation, however, allows second postconviction counsel to ignore defendant's substantive claims.

¶ 41 While the State contends that *Lander* is inapplicable because second postconviction counsel swore to her compliance with Rule 651(c), we find the record rebuts any conclusion that second postconviction counsel made the necessary amendments to adequately present defendant's substantive claims. Counsel testified that she complied with Rule 651(c), but her statements and

motion made clear that she did not believe filing an amended petition to properly set forth defendant's substantive claims was required when she motioned to withdraw based on her inability to allege facts demonstrating the absence of defendant's culpable negligence. Moreover, there is no dispute that second postconviction counsel did not amend the *pro se* petition, which contained procedurally defaulted claims of ineffective assistance of trial counsel. As stated in the previous appeal, such failure equates to noncompliance with Rule 651(c)'s duty to make the necessary amendments for adequate presentation of defendant's claims. *Holt*, 2024 IL App (5th) 220152-U, ¶¶ 19-20. Accordingly, second postconviction counsel failed to comply with Rule 651(c).

¶ 42 Citing *Frey*, 2024 IL 128644, ¶ 28, the State alternatively requests that this court find any error in granting the motion to withdraw harmless given that the State will not waive the timeliness defense. We find *Frey* distinguishable, and we will not let the State's predisposition of defendant's unamended claims dictate our decision.

¶ 43 Although *Frey* found that "judicial economy sometimes dictates affirming the grant of leave to withdraw even where the motion to withdraw is deficient" (internal quotation marks omitted) (*id.*), it did not address the current situation where a motion to withdraw was filed in the absence of Rule 651(c) compliance. Indeed, the postconviction counsel in *Frey* complied with Rule 651(c). *Id.* ¶ 35. *Frey* also expressly acknowledged that the Illinois Supreme Court found a deficient motion to withdraw was harmless "when it appeared that counsel had fulfilled his duties under Rule 651(c) and the record showed that the petition was frivolous and without merit." *Id.* ¶ 28.

¶ 44 Here, second postconviction counsel did not comply with Rule 651(c). Postconviction counsel must comply with Rule 651(c) before filing a motion to withdraw. *People v. Smith*, 2016 IL App (4th) 140085, ¶ 31; *People v. Moore*, 2018 IL App (2d) 170120, ¶ 33. Importantly, second

postconviction counsel in no way contended defendant's substantive claims lacked merit. To adopt the State's position would require this court to ignore *Lander*'s clear holding that Rule 651(c) requires postconviction counsel to make all amendments necessary to adequately present defendant's claims regardless of the timeliness of his *pro se* petition. *Lander*, 215 Ill. 2d at 584-85.

¶ 45 We, moreover, remind that prejudice is not required for remand when postconviction counsel fails to shape a claim in the proper legal form. *Addison*, 2023 IL 127119, ¶¶ 33, 37. Our supreme court has rejected a harmless error analysis under such circumstances and repeatedly clarified that determination of the merits prior to Rule 651(c) compliance is inappropriate. See *id.* ¶¶ 33, 37, 41. As such, affirming the dismissal of the petition would be improper when counsel had not complied with Rule 651(c). See *id.* ¶ 41. We therefore reverse the dismissal of defendant's postconviction petition and remand for new second-stage proceedings. On remand, the circuit court should appoint new postconviction counsel who should comply with Rule 651(c).

¶ 46 III. CONCLUSION

¶ 47 The circuit court erred in granting second postconviction counsel's motion to withdraw where counsel failed to comply with the duties of Rule 651(c). Accordingly, we reverse the circuit court's order and remand for new second-stage proceedings after newly appointed counsel complies with Rule 651(c).

¶ 48 Reversed and remanded.