

2026 IL App (1st) 242041-U
No. 1-24-2041
Order filed September 23, 2026

Third Division

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

IN THE
APPELLATE COURT OF ILLINOIS
FIRST DISTRICT

THE PEOPLE OF THE STATE OF ILLINOIS,	)	Appeal from the Circuit
	)	Court of Cook County.
Plaintiff-Appellee,	)	
	)	No. 12 CR 13810
v.	)	
	)	
ALVIN GRAY,	)	Honorable
	)	Lauren Gottainer Edidin,
Defendant-Appellant.	)	Judge, presiding.

JUSTICE MARTIN delivered the judgment of the court.
Presiding Justice Quish and Justice Lampkin concurred in the judgment.

ORDER

- ¶ 1 *Held:* Postconviction counsel's performance complied with Illinois Supreme Court Rule 651(c) (eff. July 1, 2017).
- ¶ 2 Alvin Gray appeals the second-stage dismissal of his petition filed pursuant to the Postconviction Hearing Act (Act) (725 ILCS 5/122-1 *et seq.* (West 2016)). Gray alleges that his postconviction counsel's performance was unreasonable. We affirm the circuit court's order dismissing the petition.¹

¹In adherence with the requirements of Illinois Supreme Court Rule 352(a) (eff. July 1, 2018), this appeal has been resolved without oral argument upon the entry of a separate written order.

¶ 3

I. BACKGROUND

¶ 4

Following a jury trial, Gray was convicted of burglary and was sentenced as a Class X offender to a term of 15 years' imprisonment. On direct appeal, this Court affirmed Gray's conviction and sentence over his argument, among others, that the court erred in denying his motion to suppress evidence. See *People v. Gray*, 2016 IL App (1st) 141908-U. We recount only those facts relevant to the issue on appeal.

¶ 5

A. Pretrial

¶ 6

Pretrial, defense counsel received discovery including an event query created following a 9-1-1 call reporting a burglary. The query listed the caller as "Karla Johnson" and described the call as reporting an African American male wearing a backwards black baseball hat, shorts, and a blue shirt who was "attempting" to break into a silver Hyundai SUV. Counsel also received a disk, which he later informed the court he had reviewed and would not be using at trial. The disc's content was not otherwise disclosed on the record.

¶ 7

Counsel filed two motions to quash arrest and suppress evidence, claiming Gray was arrested in violation of his fourth amendment rights. At a hearing, Chicago police officer Jankowski testified that he was on patrol with his partner on July 15, 2012, when he received a dispatch call reporting a burglary in progress in the 2300 block of North Geneva Terrace.

¶ 8

When the officers arrived in the vicinity, they observed a man matching the suspect's description. The officers detained the man and drove him to the 2300 block of Geneva Terrace. The man was presented to Robert Skelton, the man who called 9-1-1 to report the burglary, for a show-up identification. Skelton identified the man as the person he saw burglarizing the parked car.

¶ 9

At the close of the hearing, the court denied Gray's motion.

¶ 10 B. Trial

¶ 11 Skelton was working in his home at around 1:20 a.m. in the 2300 block of North Geneva Terrace when he heard a car alarm sound. Looking out his office window, he saw a man rummaging through the passenger side of a car. Skelton “could see directly into the car from [his] window as [the man] was going through the car.” The car’s inside light was on, the headlights were blinking, and the alarm was sounding. Despite this, the man continued to search the car.

¶ 12 As the man exited the car, Skelton “observed” the man—whom he described as a Black male wearing shorts, a blue shirt, and a backwards black hat—who he identified in court as Gray. Skelton called 9-1-1, using a phone that was registered to his wife, and told the dispatcher that he saw a man stealing from a car whose alarm was going off. He then opened his window and said “[y]ou better start running because I talked to the police.” The man responded by looking in Skelton’s direction, “[f]ace to face.”

¶ 13 Shortly after, Skelton received a phone call from the police, who asked if he could identify the person he saw rummaging through the car. The officers removed a man from the backseat of their car and shined a flashlight on him. Without hesitation and with “no doubt,” Skelton identified the man as the burglar.

¶ 14 Officers Bronkema and Jankowski responded to the dispatch call. In the 2200 block of Geneva Terrace, which was otherwise deserted, officer Bronkema saw a man with a backpack walking down the street. The officers shined a spotlight and saw the man matched the description given by dispatch. They detained the man and the officer confirmed the suspect’s description.

¶ 15 The officers drove the man to the 2300 block of Geneva Terrace, where Skelton identified him as the person who riffled through the car. Officer Bronkema then inspected the car and saw an open glove compartment, with “papers strewn everywhere.” He found a City of Chicago vehicle

sticker receipt in the name of Daniel Webster. Officers then located Webster and informed him his car had been broken into.

¶ 16 C. Posttrial Motion

¶ 17 Gray filed a *pro se* motion for new trial claiming, among other issues, that trial counsel was ineffective for failing to call the 9-1-1 operator that spoke directly to Skelton. Gray claimed that during discovery, counsel received an event query that stated the 9-1-1 caller reported a man “attempting” to break into a parked car.

¶ 18 Claiming the operator was the person who wrote the event query summary, Gray argued the operator should have been called as a witness. In response, the trial court conducted a *Krankel* inquiry. See *People v. Krankel*, 102 Ill. 2d 181 (1984).

¶ 19 Gray argued his counsel was ineffective for failing to use the event query to impeach Skelton’s testimony that someone was inside the car. In response, trial counsel responded that he never spoke with the person who took the 9-1-1 call, the 9-1-1 call audio was not included in discovery, and the 9-1-1 call “was not recorded.”

¶ 20 Counsel noted he discussed the event query with Gray and told him its use at trial could raise several foundational problems. He said there was no way to confirm if the event query reflected the words Skelton told the operator. Further, counsel did not believe that confronting Skelton with the event query would have been successful, since Skelton would not know what the event query was or how it was created.

¶ 21 The court declined to appoint new counsel and denied Gray’s motion for a new trial, finding that the issues Gray raised were matters of trial strategy and did not reflect ineffective assistance of counsel. The court sentenced Gray to 15 years’ imprisonment as a Class X offender.

¶ 22

D. Postconviction

¶ 23

Gray filed an initial *pro se* postconviction petition alleging, among other claims, ineffective assistance of trial counsel for failing to investigate the person who created the event query, and that appellate counsel was ineffective for failing to raise the claim on appeal. Gray attached a copy of the subpoena for materials related to the incident, the 9-1-1 event query, a letter from the Office of Emergency Management and Communications (OEMC) explaining that the description of the 9-1-1 call is not verbatim, and a letter from OEMC stating part of the audio had been preserved.

¶ 24

The circuit court advanced the petition to second stage proceedings and appointed Gray counsel. Counsel filed a Rule 651(c) certificate and an amended petition, and noted that he was in receipt of a disc containing dispatcher communications to the police officers but he did not believe the 9-1-1 audio call existed. The State filed a motion to dismiss, arguing Gray could not meet either element necessary to prove ineffective assistance of counsel.

¶ 25

At a hearing on the motion, postconviction counsel argued the 9-1-1 operator could have been called to impeach Skelton's testimony, as a prior inconsistent statement for impeachment purposes. The State countered that the event query could not be used to impeach Skelton, as the statement could not be attributed to him and it was unclear who made the query. They did not know if the 9-1-1 operator was available at the time of trial or where the operator might be.

¶ 26

The court granted the motion to dismiss, noting (1) Skelton testified to what he saw and the content of his statement to the 9-1-1 operator, (2) it was unknown who made the event query, (3) it was unknown if the person who made the query was available at the time of trial, and (4) trial counsel's strategy and decisions did not amount to ineffective assistance. Gray timely appealed.

¶ 27

II. ANALYSIS

¶ 28

On appeal, Gray argues postconviction counsel provided unreasonable assistance by failing to include, or explain the absence of, an affidavit from the 9-1-1 operator. He maintains the operator's testimony would have had a reasonable probability of changing the result at trial.

¶ 29

The State counters that Gray's postconviction counsel provided reasonable assistance under Illinois Supreme Court Rule 651(c) (eff. July 1, 2017), where postconviction counsel thoroughly explained and included evidence of what Gray believed the 9-1-1 operator would say.

¶ 30

The Act (725 ILCS 5/122-1 *et seq.* (West 2012)) enables a criminal defendant to challenge their conviction based on alleged constitutional violations that occurred during their trial or at sentencing. *People v. Dupree*, 2018 IL 122307, ¶ 28. Proceedings under the Act are divided into three stages of review. *People v. Domagala*, 2013 IL 113688, ¶ 32.

¶ 31

At the first stage, a petitioner need only assert enough facts to set forth the gist of a constitutional claim. *People v. Hodges*, 234 Ill. 2d 1, 9 (2009). The circuit court has 90 days to review a petition at the first stage. 725 ILCS 5/122-2.1(a)(2) (West 2012). Issues decided on direct appeal are barred by *res judicata* and issues that could have been raised, but were not, are forfeited. *People v. Blair*, 215 Ill. 2d 427, 442 (2005).

¶ 32

If the circuit court—after a threshold evaluation of the allegations—finds that the petition has made an arguable constitutional claim, the petition then advances to the second stage and petitioner may be appointed counsel. *People v. Tate*, 2012 IL 112214, ¶ 10. Alternatively, if the court finds that the petition is frivolous or patently without merit, the court may dismiss the petition. *Id.* If the petition is not dismissed within the proscribed 90-day period, it must be docketed for further consideration. 725 ILCS 5/122-2.1(b) (West 2012).

¶ 33 At the second stage, appointed counsel is required to perform three specific tasks, pursuant to Illinois Supreme Court Rule 651(c) (eff. July 1, 2017), to ensure a petitioner receives a reasonable level of assistance. *People v. Smith*, 2020 IL App (1st) 181220, ¶ 15. After counsel has made any necessary amendments to the petition, the State enters the proceedings and shall file an answer or motion to dismiss the petition. 725 ILCS 5/122-5 (West 2012).

¶ 34 “During the second stage, the petitioner bears the burden of making a substantial showing of a constitutional violation.” *Domagala*, 2013 IL 113688, ¶ 35. A substantial showing means the allegations, if proven at an evidentiary hearing, would entitle the petitioner to relief. *Id.* The court does not resolve evidentiary questions, nor does it engage in any fact-finding or credibility determinations. *Id.*

¶ 35 Instead, all well-pled factual allegations are taken as true unless positively rebutted by the trial record. *Id.* A petition is advanced to the third stage—an evidentiary hearing—only when the allegations, supported by “affidavits, records, or other evidence” (725 ILCS 5/122-2 (West 2012)), make a substantial showing of a constitutional deprivation. *Dupree*, 2018 IL 122307, ¶ 28.

¶ 36 We review the second-stage dismissal of a postconviction petition *de novo*. *Id.*; see *People v. Parada*, 2020 IL App (1st) 161987, ¶ 18 (*de novo* review means we analyze the petition’s claims the same as a trial court would).

¶ 37 There is no constitutional right to the assistance of counsel in a postconviction proceeding. *People v. Addison*, 2023 IL 127119, ¶ 19. Instead, petitioners are “entitled only to the level of assistance granted by the Act,” which provides for a reasonable level of assistance. *Id.* Illinois Supreme Court Rule 651(c) (eff. July 1, 2017) provides a safeguard to ensure that petitioners receive the required level of assistance.

¶ 38 Rule 651(c) requires postconviction counsel to certify that they “ha[ve] made any amendments to the petitions filed *pro se* that are necessary for an adequate presentation of petitioner’s contentions.” *Id.* The rule further necessitates that counsel shall consult with the petitioner to ascertain their contentions of deprivation of constitutional rights, examine the record of the proceedings at trial and, if necessary, amend the petition to ensure the petitioner’s arguments are adequately presented. *Id.*

¶ 39 A certificate filed pursuant to Rule 651(c) creates a rebuttable presumption that postconviction counsel rendered reasonable assistance. *People v. Smith*, 2022 IL 126940, ¶ 29. It is the petitioner’s burden to overcome “that presumption by showing that postconviction counsel did not substantially comply with the strictures of the rule.” *Addison*, 2023 IL 127119, ¶ 21. The petitioner can do so by demonstrating that postconviction counsel failed to make all necessary amendments to the petition. *Id.*

¶ 40 The question of whether postconviction counsel complied with Rule 651(c) is a question of law, which we review *de novo*. *Id.* ¶ 17 (where the issue is the proper interpretation of a supreme court rule, our review is *de novo*).

¶ 41 Here, Gray argues that his counsel did not comply with Rule 651(c) because he failed to attach an affidavit from the 9-1-1 operator to the amended postconviction petition, despite advancing the claim that trial counsel was ineffective for failing to call the 9-1-1 operator at trial. As postconviction counsel filed a Rule 651(c) certificate, counsel has established a rebuttable presumption that he rendered reasonable assistance.

¶ 42 Gray correctly asserts that postconviction counsel should make any amendments necessary to adequately present a petitioner’s claims. But, he acknowledges that a substantial showing of

ineffective assistance for failing to call a witness does not require an affidavit from the proposed witness in every case.

¶ 43 Based on the facts in this case, we agree with the circuit court’s dismissal of Gray’s postconviction petition and find that an affidavit from the 9-1-1 operator was not necessary to raise a substantial showing of ineffective assistance. Of note, postconviction counsel consulted with Gray, examined the record of the trial proceedings, and made necessary amendments to the postconviction petition.

¶ 44 In the amended petition, postconviction counsel noted that the portion of the 9-1-1 call that recorded the conversation between the operator and Mr. Skelton “was not turned over to the defense and had apparently never been preserved.” However, even if the 9-1-1 audio had been preserved and the operator were to testify that Skelton had reported someone “attempting” to break into a vehicle, we fail to see how the outcome would have differed. The event query was available at trial. Skelton was interviewed and cross-examined regarding the statement he made to the 9-1-1 operator.

¶ 45 As noted in counsel’s amended postconviction petition, during the pretrial motion hearing, counsel asked Officer Jankowski what the 9-1-1 operator had told him and used the event query to refresh the officer’s recollection. Despite being shown the summary of the event query, the officer stated the dispatcher had relayed that “a male black in a backwards black baseball hat and a blue T-Shirt and black shorts had just broken into a silver SUV.”

¶ 46 Moreover, there was corroborating evidence that the car was broken into. The car’s alarm was going off, the glove compartment was open, and various paperwork was strewn about the passenger seat. Webster, the car’s owner, testified that while the other doors locked with “keyless entry,” the passenger side did not lock and would emit an alarm when the door was opened.

Further, the car did not have “stuff all over the place” and the papers from the glove compartment were not “strewn about” the last time he saw his car.

¶ 47 Postconviction counsel relied upon the similarities between Skelton’s testimony and the 9-1-1 event query to infer that the “words were relayed as closely to verbatim as possible.” This statement is contradicted by the OEMC letter attached to the petition—which specifically relayed that the information in the 9-1-1 event query was *not verbatim*. Even if it were not, a review of the transcripts makes clear that the circuit court took Gray’s claims as true without an affidavit and made no finding that an affidavit was necessary or lacking.

¶ 48 This is not a case where postconviction counsel failed to properly comply with Rule 651(c). Nor is it a case where counsel failed to shape a defendant’s claims into the proper form. Rather, this is a case where the circuit court (1) held a second stage hearing on a postconviction petition that counsel amended, (2) considered the parties’ arguments, and (3) concluded the petition did not meet the second-stage standard for legal sufficiency.

¶ 49 Specifically, the court found Gray failed to make a showing under *Strickland v. Washington*, 466 U.S. 688 (1984), that trial counsel’s performance fell below an objective standard of reasonableness. The court noted the difficulty, if not impossibility, of determining who transmitted the event query and emphasized that Skelton testified and there was full opportunity to cross-examine him about the event query and the 9-1-1 call.

¶ 50 The court noted that even if the operator were to have been called as witness, it would not have made a difference in the outcome of the trial. The court stated it believed Gray was attacking trial counsel’s defense strategy and found Gray was unable to establish prejudice from the claimed ineffective assistance. Last, the court noted that postconviction counsel did an “excellent job” and

filed an “excellent” amended petition, but that it was clear Gray was unable to hit the *Strickland* standards to demonstrate ineffective assistance.

¶ 51 From the court’s comments, it is clear that the State’s motion to dismiss was granted based on the merits of the claim and not based on any lack of supporting documentation. Accordingly, for these reasons, we find postconviction counsel properly complied with Rule 651(c) and Gray has failed to rebut the presumption of reasonable assistance. See *People v. Rogers*, 2026 IL App (4th) 250262, ¶¶ 47-50 (finding the presumption un rebutted where counsel consulted with the petitioner, examined the record, and addressed the petitioner’s claims in either a motion to withdraw or an amended petition).

¶ 52 III. CONCLUSION

¶ 53 Postconviction counsel complied with Rule 651(c) when he consulted with Gray to ascertain his contentions, examined the record of the proceedings at trial, and made necessary amendments to Gray’s *pro se* petition. We find no ineffective assistance of postconviction counsel. Accordingly, we affirm the circuit court’s dismissal of Gray’s postconviction petition.

¶ 54 Affirmed.