

NOTICE
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2021 IL App (5th) 170337-U

NO. 5-17-0337

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,)	Clinton County.
)	
v.)	No. 09-CF-197
)	
BRIAN K. NORBECK,)	Honorable
)	Stanley M. Brandmeyer,
Defendant-Appellant.)	Judge, presiding.

PRESIDING JUSTICE BOIE delivered the judgment of the court.
Justices Moore and Barberis concurred in the judgment.

ORDER

¶ 1 *Held:* We reverse the trial court’s order dismissing the defendant’s amended petition for postconviction relief at the second stage where postconviction counsel provided unreasonable assistance, and we remand for further second-stage proceedings with the appointment of new counsel.

¶ 2 The defendant, Brian K. Norbeck, appeals from a judgment dismissing his amended petition for postconviction relief under the Post-Conviction Hearing Act (Act) (725 ILCS 5/122-1 *et seq.* (West 2016)). The defendant argues that postconviction counsel provided unreasonable assistance of counsel when he did not comply with Illinois Supreme Court Rule 651(c) (eff. Feb. 6, 2013) and unreasonably failed to

adequately amend and support the defendant's claims. For the following reasons, we reverse the circuit court's judgment and remand for further proceedings.

¶ 3

I. BACKGROUND

¶ 4

A. Proceedings in the Trial Court

¶ 5 The relevant facts are as follows. On December 28, 2009, the defendant was charged with four counts of predatory criminal sexual assault of a child in violation of section 12-14.1(a)(1) of the Criminal Code of 1961 (Code) (720 ILCS 5/12-14.1(a)(1) (West 2008)), in that the defendant, who was 17 years of age or older, committed two acts of sexual penetration each with N.S. and C.O., who were under 13 years of age when the acts were committed. On June 3, 2010, the State filed a supplemental information which added two additional counts of predatory criminal sexual assault of a child in violation of section 12-14.1(a)(1) of the Code regarding C.N., alleging that the defendant touched the anus and penis of C.N. with his mouth, counts V and VI.

¶ 6 A preliminary hearing was set on June 7, 2010. On that day, the State filed a second supplemental information. The second supplemental information charged the defendant with two additional counts; count VII alleging criminal sexual assault in violation of section 12-13(a)(2) of the Code (*id.* § 12-13(a)(2)), a Class 1 felony, and count VIII alleging child pornography in violation of section 11-20.1(a)(1) of the Code (*id.* § 11-20.1(a)(1)), also a Class 1 felony.

¶ 7 The defendant eventually pled guilty to counts I, VII, and VIII. On July 12, 2010, the defendant's sentencing hearing was held. The trial court sentenced the defendant as follows: (1) on count I, to 45 years in the Illinois Department of Corrections, 85% of

which must be served without parole; (2) on count VII, to 10 years consecutive to count I; and (3) on count VIII, to 10 years consecutive to count VII.

¶ 8 B. Postconviction Proceedings and Appeals

¶ 9 The defendant filed an untimely notice of appeal on April 22, 2011, which was dismissed by this court on June 24, 2011. On July 15, 2013, the defendant filed a *pro se* postconviction petition. In that petition, the defendant alleged: (1) ineffective assistance of counsel on the basis of trial counsel's failure to file a motion to suppress involuntary statements made due to being on psychotropic medication, "Lexapro" and "Xanax," at the time he made the statements; (2) ineffective assistance of counsel on the basis of trial counsel's failure to properly investigate and file a motion to dismiss the newly filed charges due to speedy trial violations; and (3) ineffective assistance of counsel on the basis of trial counsel's failure to investigate a change in Illinois law permitting the defendant's sentence to be afforded day-for-day credit. The remainder of the defendant's contentions in his *pro se* petition were a challenge to the validity of his sentence. On July 16, 2013, the trial court reviewed the defendant's *pro se* petition for postconviction relief and issued an order appointing the public defender to represent the defendant and amend his petition if necessary.

¶ 10 On February 26, 2014, a status hearing was held on the defendant's postconviction petition. Postconviction counsel for the defendant informed the trial court that he had received "some transcripts" that week; however, postconviction counsel required discovery from the State. Postconviction counsel noted that the defendant's former counsel had all of the original discovery, and postconviction counsel asked for a

continuance. On April 2, 2014, another status hearing was held. Postconviction counsel again informed the trial court that he required all of the discovery. Postconviction counsel noted that he had received the written documents, but he still required the copies of the videotapes which were part of the case. Postconviction counsel informed the trial court that the defendant's prior attorney turned over all of the discovery to the defendant's father, and that he was going to contact his client and determine if he could get the videos from his client's father, and, if not, postconviction counsel would come back and ask the State. The State informed the trial court that if postconviction counsel required the videos, they would endeavor to reproduce copies as needed.

¶ 11 On September 16, 2016, the defendant, through postconviction counsel, filed an amended postconviction petition alleging: (1) ineffective assistance of counsel on the basis of failing to file a motion to suppress the defendant's statements; (2) ineffective assistance of counsel on the basis of failing to file a motion to dismiss counts V, VI, VII, and VIII for violating section 103-5 of the Code of Criminal Procedure of 1963 (725 ILCS 5/103-5 (West 2008)); (3) ineffective assistance of counsel on the basis of providing false and misleading information to the defendant that led to a plea agreement; and (4) a violation of the defendant's rights to effective counsel and due process by the trial court's refusal of the defendant's motion to continue jury setting after the filing of additional charges.

¶ 12 On April 17, 2017, the State filed a motion to dismiss without further hearing, defendant's amended postconviction petition. The State argued: (1) that no affidavits were provided by the defendant and the trial court must rely on the court's records and

transcript to establish a substantial showing of a violation of the defendant's constitutional rights; (2) that defense counsel's decision not to file motions to dismiss counts V, VI, VII, and VIII was a decision involving trial strategy and tactics; (3) that the defendant suffered no prejudice because had the counts actually been dismissed, the defendant was still facing trial for four counts of predatory criminal sexual assault of a child, which, if found guilty, would still leave the defendant with the same sentencing evidence, yet subject to a provision in the Illinois statutes requiring him to be sentenced to a term of natural life imprisonment; (4) the discussions of pending and potential charges is a matter of trial strategy and that a voluntary plea waives all nonjurisdictional errors or irregularities, including constitutional ones; (5) that the transcript of the final pretrial hearing demonstrates that the defendant was aware of the existence of a third victim and the additional discovery contained no new evidence providing the trial court a basis for finding that trial counsel should be fully prepared to argue an adequate defense at a jury trial at that time; and, finally, (6) even if the defendant had alleged a violation of his constitutional rights due to a discretionary decision of trial counsel, this fell within the purview of counsel's trial strategy.

¶ 13 On May 30, 2017, the trial court filed its order granting the State's motion to dismiss the amended postconviction petition without an evidentiary hearing. The trial court noted that it must take as true all well-pled facts, except those positively rebutted by the record. The trial court noted that each claim stated in the defendant's amended petition was "contrary to the transcript of the record in this case." The trial court held that its review showed that the trial court properly admonished the defendant concerning the

issues raised. The trial court asserted that no record before the court suggested that the defendant was diagnosed for a disorder which would interfere with his defense, or that required medication to treat. The trial court found that no record exists suggesting that trial counsel refused to file any motions that would have aided in the defense of the case and was full of instances where the trial court inquired whether the defendant understood and accepted its admonishments. The trial court emphasized that the defendant's impressions of the effectiveness of his attorney were positive and contained in the record. Further, the trial court noted that no affidavits were filed.

¶ 14 On June 28, 2017, the defendant, by counsel, filed a motion to reconsider dismissal of amended postconviction petition as counsel, requesting leave of court to file an affidavit and for the trial court to reconsider its ruling based on the forthcoming affidavit. On July 31, 2017, the defendant, by counsel, filed an amended motion to reconsider the dismissal of the amended postconviction petition and attached an affidavit of the defendant. On August 10, 2017, the trial court entered a docket order which maintained the rationale of its original order, excepting the portion referring to the failure of the defendant to file a supporting affidavit. On August 25, 2017, the defendant filed a notice of appeal.

¶ 15

II. ANALYSIS

¶ 16 The defendant now appeals the second-stage dismissal of his amended postconviction petition. The defendant does not challenge the second-stage dismissal of his amended postconviction petition on the merits. Instead, he contends that postconviction counsel provided an unreasonable level of assistance during the second-

stage proceedings, when he failed to comply with Illinois Supreme Court Rule 651(c) (eff. Feb. 6, 2013) and adequately amend and support defendant's postconviction claims. Defendant requests this court to remand for appointment of new counsel and further second-stage proceedings.

¶ 17 The Act provides a remedy to a criminal defendant whose federal or state constitutional rights were substantially violated in his original trial or sentencing hearing. *People v. Pitsonbarger*, 205 Ill. 2d 444, 455 (2002). A postconviction proceeding is not an appeal from an underlying judgment, but rather a collateral attack on the judgment. *People v. Towns*, 182 Ill. 2d 491, 502 (1998). As a collateral proceeding, a postconviction proceeding allows inquiry only into constitutional issues that were not and could not have been adjudicated in an appeal of the underlying judgment. *Id.*

¶ 18 The Act sets forth a three-stage process for postconviction proceedings. *People v. Little*, 2012 IL App (5th) 100547, ¶ 12. At the first stage, the trial court independently assesses a defendant's petition and may summarily dismiss the petition if the court determines that it is frivolous or patently without merit. *Id.* If not dismissed at the first stage, the petition advances to the second stage where counsel may be appointed, and the State may move to dismiss the petition. *Id.* At the second stage, the trial court must determine whether the petition contains sufficient allegations of a constitutional violation, and if a substantial showing is made, the petition proceeds to the third stage for an evidentiary hearing. *Id.* Any factfinding or credibility determinations will be made at the evidentiary stage, rather than the dismissal stage, of the proceedings. *People v. Coleman*, 183 Ill. 2d 366, 385 (1998).

¶ 19 The Act provides the right to counsel at the second and third stages of the proceedings. *People v. Wallace*, 2018 IL App (5th) 140385, ¶ 29 (citing 725 ILCS 5/122-4 (West 2012)). The right to counsel is statutory rather than constitutional and, as such, the level of assistance guaranteed to the defendant is a “reasonable” level of assistance. *People v. Turner*, 187 Ill. 2d 406, 410 (1999). In order to assure the reasonable assistance required by the Act, Supreme Court Rule 651(c) imposes specific duties on postconviction counsel. *Id.* Rule 651(c) requires that postconviction counsel: “(1) consult with the petitioner either by mail or in person to ascertain the contentions of deprivation of constitutional rights; (2) examine the record of the trial court proceedings; and (3) make any amendments to the *pro se* petition necessary for an adequate presentation of the petitioner’s contentions.” *People v. Perkins*, 229 Ill. 2d 34, 42 (2007).

¶ 20 Postconviction counsel may demonstrate compliance with Rule 651(c) by filing a certificate, representing that counsel has fulfilled his or her duties. *Id.* at 50. “The filing of a Rule 651(c) certificate gives rise to a presumption that postconviction counsel provided reasonable assistance during second-stage proceedings under the Act.” *People v. Jones*, 2011 IL App (1st) 092529, ¶ 23. However, “where postconviction counsel failed to fulfill the duties of Rule 651(c), remand is required, regardless of whether the claims raised in the petition had merit.” *People v. Russell*, 2016 IL App (3d) 140386, ¶ 12. In other words, “[p]ostconviction counsel’s noncompliance with Rule 651(c) may not be excused on the basis of harmless error.” *Id.*; *Turner*, 187 Ill. 2d at 416 (reviewing courts “will not speculate whether the trial court would have dismissed the petition without an evidentiary hearing if counsel had adequately performed his duties under Rule 651(c)”).

We review the question of whether postconviction counsel met his obligations under Rule 651(c) *de novo*. *Wallace*, 2018 IL App (5th) 140385, ¶ 31.

¶ 21 The defendant claims that the record is devoid of any evidence that postconviction counsel received adequate discovery, consulted with the defendant to ascertain his contentions of constitutional deprivation, or that postconviction counsel made the necessary amendments to properly present defendant's *pro se* claims. The defendant argues that postconviction counsel should have amended his *pro se* postconviction petition to shape his contentions into nonconclusory allegations and attached supporting evidence to his amended postconviction petition. The State argues that the record supports trial counsel's substantial compliance with the rule.

¶ 22 In order to comply with the third requirement of Rule 651(c), postconviction counsel was required to shape defendant's claims into "appropriate legal form." *People v. Johnson*, 154 Ill. 2d 227, 238 (1993). Pursuant to section 122-2 of the Act, a petition must "clearly set forth the respects in which petitioner's constitutional rights were violated" and "shall have attached thereto affidavits, records, or other evidence supporting its allegations or shall state why the same are not attached." 725 ILCS 5/122-2 (West 2016). A petition not supported by affidavits or other supporting documents is generally dismissed without an evidentiary hearing unless the petitioner's allegations stand uncontradicted and are clearly supported by the record. *Johnson*, 154 Ill. 2d at 240.

¶ 23 In the present case, rather than standing on the defendant's *pro se* petition, postconviction counsel filed an amended petition which included three of defendant's *pro se* contentions regarding ineffective assistance of counsel and added an additional

claim of ineffective assistance of counsel, while electing not to raise the defendant's change in law argument. The defendant does not now argue that the change in law argument should have been included. However, because postconviction counsel did not include all of the claims previously raised in defendant's *pro se* petition, we presume counsel determined that the claims raised in the amended petition were not frivolous. See *People v. Greer*, 212 Ill. 2d 192, 205 (2004) ("An attorney *** who determines that defendant's claims are meritless cannot in good faith file an amended petition on behalf of defendant.").

¶ 24 Postconviction counsel first filed the amended postconviction petition on September 16, 2016, alleging, among other arguments, that the defendant received ineffective assistance of trial counsel because no motion was filed to suppress the defendant's statements. In addition to failing to file any affidavits or supporting documents, the defendant's postconviction counsel failed to file the requisite certificate of compliance stating that he had fulfilled his obligations under Rule 651(c). After the amended petition was dismissed, the defendant's counsel filed a motion to reconsider requesting the trial court allow the filing and consideration of the defendant's affidavit and reconsider its ruling with the affidavit. The court allowed, and then dismissed at second stage adopting the original order except that portion which referenced there being no affidavit. While the State argues that the record supports a finding that the defendant's postconviction counsel substantially complied with the requirements of Rule 651(c), we do not find support for that contention in the record.

¶ 25 First, we will address the defendant's claim of ineffective assistance of postconviction counsel for failing to adequately amend the petition to present his claims, as we find the issue dispositive. In order to proceed to a third-stage hearing, a petitioner must make a substantial showing of a violation of constitutional rights. *People v. Coleman*, 183 Ill. 2d 366, 381 (1998). One of the defendant's postconviction claims was ineffective assistance of trial counsel. Ineffective assistance of counsel claims are judged under the standard set forth by the United States Supreme Court in *Strickland v. Washington*, 466 U.S. 668 (1984). In order to establish ineffective assistance of trial counsel, a defendant must first demonstrate that counsel's performance was deficient in that counsel made errors so serious that counsel was not functioning as the "counsel" guaranteed the defendant by the sixth amendment. *Id.* at 687. In so doing, a defendant must overcome the strong presumption that the challenged action or inaction of counsel was the product of sound trial strategy and not of incompetence. *People v. Barrow*, 133 Ill. 2d 226, 247 (1989). While the question of whether to file a motion to suppress is traditionally considered a matter of trial strategy, counsel's failure to file a motion to suppress may constitute ineffective assistance of counsel where such a motion is the defendant's strongest or only viable defense. *People v. Spann*, 332 Ill. App. 3d 425, 436-37 (2002). To prevail on a claim that his trial counsel was ineffective for failing to file a motion to suppress his statements, the defendant would have been required to show that the motion would have been granted, and that the trial outcome would have been different if the evidence had been suppressed. *People v. Bennett*, 222 Ill. App. 3d 188, 201 (1991).

¶ 26 The defendant alleged in his amended postconviction petition that trial counsel was deficient for failing to file a motion to suppress his statements because he informed counsel that he was previously diagnosed with an anxiety disorder and had consumed “psychotic” medication. Further, the amended petition alleged that the defendant informed trial counsel that he wished to file a motion to suppress statements based on the fact that he did not knowingly or willfully waive his right to remain silent, nor did he waive his right to counsel prior to speaking with the sheriff’s department.

¶ 27 In the defendant’s later filed affidavit, the defendant swore that he informed counsel that he had been previously diagnosed with an anxiety disorder and had consumed “psychotic” medications prior to being interviewed by the Clinton County Sheriff’s Department. Additionally, he swore that at the time of his interview he did not knowingly waive his right to remain silent in that he was having an anxiety attack, a fact not included in the amended postconviction petition. He also swore that he informed counsel of the promise of “help” made by a detective, a fact also not included in the amended postconviction petition.

¶ 28 During a police interrogation, one’s free choice to admit, deny, or refuse to answer may be overcome by the effect of drugs, and intoxication can render a waiver of rights ineffective, and statements given when emotionally upset may be involuntary. *People v. Hanlon*, 137 Ill. App. 3d 305, 319 (1985). An offer of leniency is a factor to be considered in determining the voluntariness of a confession, and statements given in consideration of promises of leniency or immunity are rendered involuntary, and therefore, inadmissible. *Id.* The determination of the issue of voluntariness of a

confession depends not upon any single factor, but on the totality of the particular circumstances in any given case. *Id.* at 318.

¶ 29 The defendant's affidavit was the only supporting evidence presented to the trial court. Under the Act, "[t]he petition shall have attached thereto affidavits, records, or other evidence supporting its allegations or shall state why the same are not attached." 725 ILCS 5/122-2 (West 2016). "[T]he purpose of section 122-2 is to show a defendant's postconviction allegations are capable of objective or independent corroboration." *People v. Hall*, 217 Ill. 2d 324, 333 (2005). "Failure to attach independent corroborating documentation or explain its absence may, nonetheless, be excused where the petition contains facts sufficient to infer that the only affidavit the defendant could have furnished, other than his own sworn statement, was that of his attorney." *Id.*

¶ 30 In the present case, the defendant's affidavit included the allegations that at the time of the interview he was under the influence of "psychotic" medication and was actively suffering from an anxiety attack. However, the presentence investigation report indicated that the defendant self-reported a history of mental health treatment from 2002, and regularly took psychotropic medications until early 2007, when he stopped taking them to obtain a pilot's license. The author of the report requested medical records which confirmed that from April of 2006 through November of 2006, the defendant was prescribed at least three medications for various mental health diagnosis, including an anxiety disorder. Despite the record indicating that the defendant stopped taking his medication in 2007, the claim was included by trial counsel in the amended postconviction petition. As such, there must have been some evidence that the defendant

took drugs or medication prior to the interview and that the substance was of a type to have, and did in fact have, intoxicating effect that could cause the defendant's judgment to be impaired in some way.

¶ 31 It is unclear from the pleading or affidavit what is meant by "psychotic medications" as that phrase is not defined in the pleadings and there were no contextual facts in the pleading by which one could identify what was meant. The pleadings failed to include what medication the defendant alleged he consumed and when. Psychotic medications could be referring to drugs that induce psychosis or could be a typo intended to mean psychotropic¹ medication or antipsychotic² medication. It is of note that in his *pro se* postconviction petition, in both his petition and affidavit the defendant claimed that he was taking psychotropic medication, including Lexapro and Xanax.

¶ 32 There is no explanation provided as to why there was a change in the allegation from the *pro se* petition, which was specific, to the vague and undefined "psychotic" medication alleged in the amended petition. The amendment left the trial court with no specific drug or drugs alleged to have been consumed, and there was no supporting information that "psychotic" medication would cause a person to be impaired or unable to knowingly and voluntarily waive his right to remain silent. Not only is it unclear on the face of the pleading and affidavit what particular medication the defendant alleged that he

¹Psychotropic medications are used to treat mental health disorders. <https://www.webmd.com/mental-health/what-are-psychotropic-medications> (last visited on Aug. 13, 2021).

²Antipsychotics are a class of drugs used commonly to treat psychotic disorders—conditions in which thinking can be irrational, and people have false beliefs (delusions) or perceptions (hallucinations)—and sometimes to treat mood disorders such as bipolar disorder or major depression. <https://www.webmd.com/mental-health/medications-treat-disorders> (last visited on Aug. 13, 2021).

consumed or when, there were no health records or prescriptions attached, no affidavit of a doctor or psychiatrist regarding the therapeutic effects or side-effects of such a medication, and no video attached to demonstrate the defendant's affect during the interview. We are aware from the record that the interview was audio and video recorded, and if it were not, counsel could have explained that it was unavailable. Such a recording would have had some tendency to show the defendant's mental and physical demeanor in responding to questions. Therefore, it may have shed light on whether a drugged state or an anxiety attack was affecting his ability to make decisions.

¶ 33 Postconviction counsel did not aid his client in providing the necessary detail to determine what was meant by psychotic medication, what drug specifically he consumed, whether it was prescribed, leftover, or an illegal substance which could cause psychosis. It is unclear when he consumed it, or what the effects may have been on his mental state for his pleadings to clearly allege that he would have been incapable, based on this medication, to have knowingly and voluntarily waived his constitutional rights.

¶ 34 Similarly, the defendant's claim that he did not knowingly or voluntarily waive his right to remain silent or to counsel based on an offer of "help" is not supported by the petition or affidavit. As stated above, an offer of leniency is a factor to be considered in analyzing the voluntariness of a confession. The defendant's affidavit includes a bare assertion that he informed his attorney that he received an offer of "help" from a detective. Taken together, neither the bare assertion that he did not waive his rights contained in his amended petition, nor the added allegation of an offer of "help" from the affidavit, is specific enough to successfully show, based on the totality of the

circumstances, the defendant did not knowingly and voluntarily waive his rights. There is no detail about the offer of help. There was no way for the trial court to analyze the offer of help without any contextual information. There is no information regarding what the offer of help was in relation to, if it was given conditionally, or if the defendant's will had been overborne. We must assume that trial counsel included the allegation for some reason; however, there is no factual or evidentiary basis on which the trial court could have found that defendant was influenced by an offer of "help."

¶ 35 We disagree with the State that it was clear from the record that the only affidavit the defendant could have furnished, other than his own sworn statement, was that of his attorney. The presentence investigation report makes clear that the author was able to contact the defendant's psychiatric provider and obtained medical records. We cannot say that an affidavit from the provider, another provider, medical records, or affidavits from others present at the police interview would not have supported the defendant's contentions. We cannot presume, as the State urges, that the video or presentence investigation report or medical records would have been detrimental to the defendant, as postconviction counsel did not explain why such documents were not attached and did not file a Rule 651(c) certificate.

¶ 36 Postconviction counsel chose to preserve the defendant's claim of ineffective assistance of counsel for failure to file a motion to suppress statements. We agree with the State, that it is therefore implied that postconviction counsel was aware of some evidence to support the claim. If there was no evidence that supported the defendant's

claim, then counsel had an ethical duty to withdraw or not include the claim. *Greer*, 212 Ill. 2d at 209.

¶ 37 The amended postconviction petition did not shape these contentions into nonconclusory allegations. Such nonfactual and nonspecific assertions which merely amount to conclusions are not sufficient to require a postconviction hearing, and failure to attach supporting affidavits to the petition or adequately explain their absence permits the dismissal of the postconviction proceeding where the petitioner's allegations are not "substantially borne out by matters appearing on the face of the record." (Internal quotation marks omitted.) *People v. Smith*, 40 Ill. 2d 562, 564 (1968).

¶ 38 As noted above, the defendant is not required to demonstrate prejudice, nor is he required to demonstrate that his claims had merit. "Our supreme court's Rule 651(c) analysis has been driven, not by whether a defendant's claims have any merit or if he can establish substantial prejudice, but by the understanding that when postconviction counsel does not adequately complete the duties mandated by the rule, the limited right to counsel conferred by the Act cannot be fully realized." *People v. Schlosser*, 2012 IL App (1st) 092523, ¶ 32. Postconviction counsel's failure to properly amend the petition directly contributed to the dismissal of the claims without an evidentiary hearing and precluded consideration of the claims on the merits. We therefore hold that postconviction counsel's performance was unreasonable and fell below the level of assistance required by Rule 651(c).

¶ 39 Counsel failed to make appropriate amendments to the postconviction petition which omitted essential elements of petitioner's constitutional claims regarding

ineffective assistance of counsel and contained virtually no evidentiary support. For the reasons outlined above, we find the record rebuts the presumption that postconviction counsel complied with Rule 651(c) and provided a reasonable level of assistance. As a result, we need not address the defendant's remaining arguments on appeal. We make no determination on the merits of defendant's underlying claims and note that new postconviction counsel is not required to advance any frivolous or spurious claims on the defendant's behalf. *Greer*, 212 Ill. 2d at 205.

¶ 40

III. CONCLUSION

¶ 41 For the foregoing reasons, we reverse the judgment of the trial court dismissing the defendant's amended petition and remand for further second-stage proceedings with the appointment of new counsel.

¶ 42 Reversed and remanded with directions.