No. 129718

IN THE
SUPREME COURT OF ILLINOIS

PEOPLE OF THE STATE OF ILLINOIS, Respondent-Appellant, v. MICHAEL WILLIAMS, Petitioner-Appellee.	On Appeal from the Appellate Court of Illinois, Fifth Judicial District, No. 5-22-0185 There on Appeal from the Circuit Court for the Twentieth Judicial Circuit, St. Clair County, Illinois No. 09 CF 1299 The Honorable Julie Katz, Judge Presiding.

BRIEF AND APPENDIX FOR RESPONDENT-APPELLANT PEOPLE OF THE STATE OF ILLINOIS

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POINTS AND AUTHORITIES

NATURE OF THE CASE

Petitioner, through retained counsel, filed a postconviction petition. The trial court dismissed the petition at the second stage. C399.[1] The appellate court reversed, *People v. Williams*, 2023 IL App (5th) 220185-U, and the People now appeal from the appellate court's judgment. No question is raised on the pleadings.

ISSUES PRESENTED FOR REVIEW

1. Whether petitioner failed to overcome the presumption that his retained postconviction counsel provided reasonable assistance.

2. Whether petitioner was required, and failed, to show that he was prejudiced from retained counsel's allegedly unreasonable assistance.

3. Whether the appellate court erred when it remanded for further second-stage proceedings with new counsel.

JURISDICTION

Jurisdiction lies under Supreme Court Rules 315 and 612. On September 27, 2023, this Court allowed the People's petition for leave to appeal.

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[1] Citations to this brief's appendix, the common law record, and the report of proceedings appear as "A__," "C__," and "R__," respectively. "Pet. App. Ct. Br., "Pet. App. Ct. Supp. Br.," "Peo. App. Ct. Br.," and "Peo. App. Ct. Supp. Br." refer to the parties' briefs in the appellate court. Certified copies of the appellate briefs will be submitted to this Court pursuant to Supreme Court Rule 318(c).

STATEMENT OF FACTS

Charges and Guilty Plea

In 2009, the People charged petitioner with two counts of armed robbery and two counts of aggravated battery with a firearm. C31-34. The trial court appointed the public defender's office to represent petitioner, C54, and the case was assigned to the Honorable John Baricevic, R10.

In 2011, petitioner entered a fully negotiated guilty plea to two counts of aggravated battery with a firearm. R231-32, 238. In exchange for petitioner's plea of guilty, the People dismissed the armed robbery counts and recommended consecutive 10-year sentences on the aggravated battery counts. R231-32. Before accepting petitioner's plea, the trial court admonished petitioner pursuant to Supreme Court Rule 402. R233-35. The trial court informed petitioner that the sentencing range for armed robbery was 31 years to natural life imprisonment, that the sentence for each aggravated battery count was 6 to 30 years of imprisonment, and that the trial court had discretion to run the "the sentences together or all at the same time." R233-34. Petitioner indicated that he understood. R234.

The People then provided a factual basis for the plea, stating that if the case went to trial, the evidence would show that petitioner and a codefendant forced two victims into a house and that the codefendant held the victims at gunpoint while petitioner ransacked the house. R236. When one of the victims reached for the codefendant's gun, both the codefendant

and petitioner shot him. R236-37. Petitioner later confessed to his girlfriend. R237. Police found identification belonging to one of the victims in petitioner's possession, and that victim positively identified petitioner as the man who shot him in the back. R238. Petitioner agreed with the People's factual basis and further agreed that he was responsible as an accomplice for his codefendant's actions and that he inflicted great bodily harm on the victim who was shot. R238-39.

Pursuant to the plea agreement, the trial court sentenced petitioner to consecutive 10-year terms of imprisonment. R11; C123.

Post-Plea Motions and Appeals

In March 2011, petitioner filed a pro se motion to withdraw his guilty plea, arguing that his plea counsel was ineffective for: (1) failing to investigate his case and (2) coercing him into accepting the plea agreement by telling him that "you are going to lose in trial and spend the rest of your life in prison if you don't take the 20 years." C124-31. The trial court denied the motion, but the appellate court reversed so petitioner could argue the motion with the assistance of counsel. *See generally People v. Williams*, 2012 IL App (5th) 110144-U.

On remand, appointed counsel filed a motion to withdraw the guilty plea, asserting that petitioner's plea counsel was ineffective, and that petitioner did not understand the nature of the charges. C186. At a hearing on the motion, petitioner testified that plea counsel had discussed with him

the charges and the possible sentence, R279, and that he understood that he was subject to a minimum sentence of 31 years imprisonment and a maximum of life, R280. He further testified that he received an initial plea offer under which he would serve 25 years in prison, and a second offer of 20 years. R279. He understood that he could take the 20-year offer or go to trial, R285-86, that if he went to trial, he would likely lose, R288, and that he accordingly accepted the plea offer instead of going to trial, R290. Petitioner further testified that plea counsel had met with him 9 or 10 times before trial, R279, that counsel had filed several motions to suppress and succeeded on one of them, R281-82, and that he could not think of anything else counsel could have done differently, *id.* Nevertheless, petitioner asserted that he accepted the plea offer because he felt that plea counsel was unprepared. R277, 290.

Plea counsel testified that petitioner "knew what was going on at all times," R293, that counsel investigated the case thoroughly and that the "State had a strong case," R294-95, and that petitioner understood counsel's proposed defense, *id.* Counsel explained that petitioner was able to talk to his family about the plea offer and — although he was "on the fence" — he ultimately accepted it. R295.

The trial court denied petitioner's motion to withdraw his plea. C183-85. The court found that there was no evidence that plea counsel was

ineffective, and that petitioner accepted a plea deal that he bargained for and understood. *Id.*

The appellate court reversed and remanded for a new hearing, finding that appointed counsel had filed a deficient Supreme Court Rule 604(d) certificate. *People v. Williams*, 2020 IL App (5th) 190264-U, ¶ 13. On remand, appointed counsel filed a new motion to withdraw the guilty plea, which realleged the claims from the prior motion to withdraw and added a claim that the trial court had failed to properly admonish petitioner under Supreme Court Rule 402(a). C228-29. At a hearing, counsel asked the trial court to reconsider its previous decision as to the ineffective assistance and voluntary plea claims but dropped the admonishment claim because counsel had learned that it rested on an incorrect reading of the relevant sentencing statute. R307-09. The trial court denied the motion to withdraw and found that petitioner was properly admonished. C234.

The appellate court again reversed, finding that appointed counsel's Rule 604(d) certificate was technically deficient. *People v. Williams*, 2020 IL App (5th) 190264-U, ¶ 17. On remand, counsel cured the deficiencies in the Rule 604(d) certificate but otherwise rested on the previous motion and testimony and asked that the court review its previous rulings. R315. The trial court again denied the motion, and the appellate court affirmed. *People v. Williams*, 2020 IL App (5th) 190264-U, ¶ 26.

Postconviction Petition Proceedings

On September 23, 2021, petitioner filed a postconviction petition through retained counsel. C369-74. The petition asserted that: (1) the trial court denied him due process when it failed to admonish him that he could receive consecutive sentences if found guilty after a trial, C371-72; (2) the trial court denied him due process when it imposed consecutive sentences without making the required finding that consecutive sentences were required to protect the public, C372-73; and (3) plea counsel was ineffective, C373. As to claim 3, the petition asserted that plea counsel brought a man whom petitioner assumed "was a member of his trial counsel's legal team" to a pre-trial meeting at the county jail and that important points of petitioner's case were discussed at that meeting. *Id.* Petitioner later learned that the individual was C.J. Baricevic, the son of the presiding judge. *Id.* The petition alleged that counsel's act of bringing C.J. Baricevic to the meeting created a conflict with presiding Judge Baricevic and amounted to ineffective assistance. C373-74. The petition further asserted that plea counsel's ineffective assistance "result[ed] in a substantial likelihood that the outcome of Petitioner's guilty plea and sentencing would have been different." C373.

In an affidavit attached to the petition, petitioner asserted that he did not understand that the trial court could order him to serve consecutive sentences. C378. He further stated that plea counsel "came to visit me with . . . the son of my trial judge and I could not continue to trial with" plea counsel. *Id.* He also indicated that he had advised his appointed post-plea

counsel of this issue, but counsel omitted the issue from his motion to withdraw his guilty plea. C379.

Petitioner's retained postconviction counsel filed a certificate stating that he had "complied with Illinois Supreme Court Rule 651(c)" and that he had "consulted with petitioner by telephone and in person," "examined the trial record to ascertain his contentions of deprivation of constitutional rights," and explaining that petitioner "did not file a pro se petition." C376.

The trial court found that the postconviction petition raised "the gist of at least one constitutional claim" and advanced the petition for second-stage proceedings. C381.

The People filed a motion to dismiss, arguing that (1) petitioner's admonishment claim was meritless because he could not show that he was prejudiced by any allegedly deficient admonishments, C387; (2) the trial court was required to run his sentences consecutively, C388; and (3) petitioner's ineffective assistance claim failed because petitioner failed to establish either prong of the test prescribed by *Strickland v. Washington*, 466 U.S. 669 (1984), C388-89. Relevant to the ineffectiveness claim, the People argued that petitioner failed to explain how trial counsel's decision to bring C.J. Baricevic to the pre-trial meeting constituted deficient performance and further failed to demonstrate that "he would not have entered into his negotiated guilty plea" but for C.J. Baricevic's attendance. C389. The People further argued that all of petitioner's postconviction claims were forfeited because he failed

to raise them in a motion to withdraw his guilty plea and in his direct appeal. C390.

At the subsequent hearing, the People rested on their written motion. R320. Petitioner's retained counsel began by conceding that the admonishment and consecutive sentencing claims were not raised previously, but counsel argued that the trial court should "consider fundamental fairness" and advance the case to a third-stage evidentiary hearing. R321. Counsel further argued that petitioner's ineffective assistance claim was not barred by forfeiture because it was based on matters outside the record. *Id.*

The trial court then questioned petitioner's counsel on the merits of the ineffectiveness claim, stating, "I'm not seeing the nexus between . . . the fact that C.J. Baricevic" attended a pre-trial meeting and "the fact that [petitioner] ultimately pled guilty." R322-23. Counsel pointed to petitioner's affidavit, in which petitioner stated that he "could not continue to trial" with plea counsel's representation and argued that petitioner's statement "satisf[ies] both prongs of *Strickland*" in that petitioner claimed that he "would have went to trial but for this incident." R323. The trial court pressed counsel on this point, explaining that petitioner faced a significant prison sentence and stating that "there needs to be a stronger showing" as to "what defense [petitioner] would have posed" and "why [petitioner] would have gone to trial and risk[ed] a life sentence." R323-24. Counsel responded that petitioner "found out that C.J. Baricevic was the son of the trial judge

and he felt pressured in that situation" to plead guilty, and "that there tells the Court that he would have went to trial but for this incident." R324.

On February 22, 2022, the trial court dismissed the postconviction petition in a written order, finding that petitioner failed to make a substantial showing of a constitutional violation. C399.

Postconviction Appeal

On appeal, petitioner argued that his retained postconviction counsel provided unreasonable assistance because he failed to adequately shape petitioner's postconviction claims into proper form, Pet. App. Ct. Br. 12-25, and that the court should remand without requiring petitioner to show that he was prejudiced by counsel's allegedly unreasonable assistance, Pet. App. Ct. Supp. Br. 3-13.

The appellate court agreed that counsel provided unreasonable assistance and that petitioner did not need to show prejudice. First, the appellate court found unreasonable assistance because counsel failed to adequately support petitioner's ineffectiveness claim and failed to argue against forfeiture. A13, ¶ 26. The court then recognized the usual rule that where postconviction counsel was retained, a petitioner on appeal needed to "establish prejudice as a result of the alleged unreasonable assistance of retained counsel" by showing that "there is at least a reasonable probability of a different outcome." A9, ¶ 19. The court declined to decide whether petitioner had shown prejudice, however, reasoning that because of

postconviction counsel's unreasonable assistance, the court could not make this determination on the record before it. A13, ¶ 26. Accordingly, the appellate court departed from the usual requirement that a petitioner show prejudice as a result of his retained counsel's unreasonable performance and "remand[ed] for further second-stage proceedings with new counsel." A14-15, ¶ 29. The court did not specify whether petitioner was to discharge his retained attorney and hire new counsel or whether the trial court was to appoint new counsel for petitioner in place of retained counsel. *See id.*

STANDARD OF REVIEW

Whether postconviction counsel provided reasonable assistance, and whether the appellate court erred in declining to decide whether petitioner was prejudiced by his counsel's allegedly unreasonable assistance, are legal questions that this Court reviews de novo. *People v. Addison*, 2023 IL 127119, ¶ 17. Whether the appellate court had the authority to remand for further second-stage proceedings with new counsel presents a question of law, which this Court reviews de novo. *See People v. Gawlak*, 2019 IL 123182, ¶ 25 (reviewing de novo whether court impermissibly interfered with due process right to counsel of choice); *People v. Webster*, 2023 IL 128428, ¶ 16 (scope of appellate court's authority to issue orders on remand presents a question of law that is reviewed de novo).

ARGUMENT

I. Petitioner's Retained Postconviction Counsel Provided Reasonable Assistance.

The Post-Conviction Hearing Act (Act), 725 ILCS 5/122-1 *et seq*., establishes a three-stage process for adjudicating postconviction claims of constitutional error. *People v. Agee*, 2023 IL 128413, ¶ 36. At the first stage, the trial court reviews the petition to determine if it is "frivolous or patently without merit." 725 ILCS 5/122-2.1. A petition that is not dismissed is docketed for second-stage proceedings, *id*., at which point the People may move to dismiss the petition, and the trial court may hold a hearing on the motion, 725 ILCS 5/155-5. "In deciding a motion to dismiss, the circuit court must determine whether the petition and accompanying documents make a substantial showing of a constitutional violation," such that a third-stage evidentiary hearing is warranted. *Agee*, 2023 IL 128413, ¶ 37.

Postconviction petitioners have no federal or state constitutional right to counsel in postconviction proceedings. *Pennsylvania v. Finley,* 481 U.S. 551, 555 (1987); *see also People v. Flores,* 153 Ill. 2d 264, 276 (1992). Instead, the assistance of counsel "'is a matter of legislative grace,'" *People v. Huff*, 2024 IL 128492, ¶ 21 (quoting *People v. Custer*, 2019 IL 123339, ¶ 30), and "the Act, which applies to all postconviction petitions, requires postconviction counsel to provide a reasonable level of assistance to a petitioner," *Agee*, 2023 IL 128413, ¶ 41 (citations omitted), irrespective of whether counsel is appointed or retained, *People v. Urzua*, 2023 IL 127789, ¶ 57; *People v.*

Johnson, 2018 IL 122227, ¶ 16. Where postconviction counsel is appointed, however, this Court set forth minimum standards in Rule 651(c), which mandates that counsel "consult[ ] with petitioner," identify his "contentions of deprivation of constitutional rights," "examine[ ] the record of the proceedings at the trial," and "make any amendments to the petitions filed *pro se* that are necessary for an adequate presentation of petitioner's contentions." *People v. Perkins,* 229 Ill. 2d 34, 42 (2008); Ill. S. Ct. R. 651(c). Where counsel is retained, by contrast, Rule 651(c) does not apply, and counsel's second-stage performance is thus governed by the Act's general reasonableness standard. *People v. Cotto*, 2016 IL 119006, ¶ 41 ("Rule 651(c) applies only to a postconviction petition initially filed by a *pro se* defendant"). This standard "'is significantly lower than the one mandated at trial by our state and federal constitutions,'" *Huff*, 2024 IL 128492, ¶ 21 (quoting *Custer,* 2019 IL 123339, ¶ 30), because petitioners "have already been stripped of the presumption of innocence, and have generally failed to obtain relief," *Addison*, 2023 IL 127119, ¶ 19.

Reviewing courts must presume that postconviction counsel "know[s] the law," *People v. Perkins,* 229 Ill. 2d 34, 51 (2008), and provided reasonable assistance, *see People v. Zareski,* 2017 IL App (1st) 150836, ¶¶ 58-59 (presuming competence of retained postconviction counsel). When counsel is appointed, a presumption of reasonable assistance arises after counsel files a Rule 651(c) certificate. *Custer*, 2019 IL 123339, ¶ 32 ("Postconviction counsel

may create a rebuttable presumption that reasonable assistance was provided by filing a Rule 651 certificate."). And, although Rule 651(c) does not apply here, *Cotto*, 2016 IL 119006, ¶ 41, retained counsel's performance is entitled to the same presumption of reasonableness, *Urzua*, 2023 IL 127789, ¶ 62 (applying presumption of reasonableness to retained counsel). Indeed, a presumption of competence applies even when the defendant's right to counsel stems from the Sixth Amendment. *People v. Holman*, 164 Ill. 2d 356, 369-70 (1995) ("The reviewing court is obligated to indulge in a strong presumption that defendant's attorney was in fact competent, that counsel exercised sound professional judgment, and that the attorney's representation fell within the broad parameters of acceptable professional assistance.").

Here, petitioner cannot overcome the presumption of reasonable assistance. To the contrary, the record shows that retained counsel shaped petitioner's claims into the proper legal form. Petitioner's admonishment and consecutive sentencing claims correctly identified the constitutional provisions and Supreme Court Rules that governed those issues and included a factual basis in support of them. C371-73. Counsel also adequately pleaded petitioner's ineffective assistance claim by alleging both that plea counsel's performance was deficient, and that the deficient performance resulted in prejudice, *Strickland v. Washington*, 466 U.S. 668, 687 (1984), in that "there is a reasonable probability that, but for counsel's errors,

[petitioner] would not have pleaded guilty and would have insisted on going to trial," *Hill v. Lockhart*, 474 U.S. 52, 58-59 (1985). Specifically, counsel alleged that plea counsel was deficient when he brought C.J. Baricevic, the son of petitioner's trial judge, to a pre-trial meeting, that plea counsel's actions deprived petitioner of his constitutional right to effective representation, and that plea counsel's deficient performance "result[ed] in a substantial likelihood that the outcome of Petitioner's guilty plea and sentencing would have been different." C373.

Counsel also adequately supported petitioner's claims. In compliance with the Act's requirement that the petition "shall have attached thereto affidavits . . . supporting its allegations," *id,* counsel included petitioner's affidavit averring that after he discovered that C.J. Baricevic was the son of his trial judge, he "could not continue to trial with" plea counsel. C378-79; *People v. Johnson,* 154 Ill. 2d 227, 248-49 (1993) (counsel must provide available affidavits and factual substantiation). Indeed, counsel sufficiently articulated petitioner's claims and provided a factual basis for those claims such that the petition survived first-stage dismissal. C381; *see, e.g.*, *Agee*, 2023 IL 128413, ¶ 53 (performance not unreasonable where counsel "shaped petitioner's . . . contentions into a claim of ineffective assistance of trial counsel that alleged deficient performance and prejudice").

Counsel also ably responded to the trial court's questions at the second-stage hearing. R320-25. When asked why petitioner's ineffective

assistance claim was not forfeited, counsel correctly explained that petitioner could not have raised the claim on direct appeal because it was based on facts outside the record. R321-22; *People v. Mahaffey,* 194 Ill. 2d 154, 171 (2000) (ineffective assistance claim not forfeited where "the facts relating to the claim do not appear on the face of the original appellate record"); *see also Addison,* 2023 IL 127119, ¶ 21 (counsel not unreasonable where counsel presents arguments to overcome procedural bars).

When the trial court turned to the merits of the claim and expressed skepticism about petitioner's assertion that he would not have accepted the plea deal but for his counsel's decision to bring C.J. Baricevic to the pre-trial meeting, counsel explained that petitioner asserted that he "could not continue to trial" with plea counsel's representation, and counsel argued that petitioner's statement "satisf[ies] both prongs of *Strickland*" in that petitioner "would have went to trial but for this incident." R323. The court then asked counsel whether "there needs to be a stronger showing" as to "why [petitioner] would have gone to trial and risk a life sentence" and whether petitioner needed to do more than simply allege that he would have gone to trial. R323-24. Counsel responded that petitioner "felt pressured" to plead guilty once he found out about C.J. Baricevic's attendance, and "that there tells the Court that he would have went to trial but for this incident." R324. Counsel's answers demonstrate that he knew that a successful *Strickland* claim required proof of both deficient performance and prejudice, and counsel

attempted to establish those prongs by asserting that petitioner took the plea only because his plea counsel brought C.J. Baricevic to a pre-trial meeting. In sum, retained postconviction counsel identified petitioner's claims, shaped them into proper legal form, and argued them to the court. In so doing, counsel provided reasonable assistance. *See generally Agee,* 2023 IL 128413, ¶¶ 53-66 (postconviction counsel provided reasonable representation where counsel pleaded the elements of the claim, included necessary affidavits, and adequately argued the basis for the claim).

For its part, the appellate court held that petitioner had overcome the presumption of reasonable assistance and that counsel's performance was unreasonable, faulting counsel for failing to muster anything more than "conclusory allegations" in support of the ineffective assistance claim. A13, ¶ 26. But the court erred in concluding that the petition's failure to survive second-stage review was due to counsel's performance, rather than its lack of merit. Postconviction counsel does not perform unreasonably simply because "his arguments in response to the State's motion to dismiss were legally without merit." *Perkins*, 229 Ill. 2d at 50, *see also People v. Spreitzer*, 143 Ill. 2d 210, 221 (1991) (counsel is not unreasonable simply because he failed "to make the petition's allegations factually sufficient to require the granting of relief"). Here, counsel "added evidentiary support" to petitioner's claims and "to the extent possible, . . . affirmatively pled petitioner's claim." *Agee*, 2023 IL 128413, ¶ 56; *see also Perkins*, 229 Ill. 2d at 51 ("We cannot assume there

was some other excuse counsel failed to raise. . . . Counsel's argument was apparently the best option available based on the facts."). That is all that reasonable assistance requires.

The appellate court further erred when it presumed that there was additional evidence that could have supported petitioner's ineffective assistance claim. The court reasoned that because counsel included the claim in the petition, counsel must have thought the claim had merit and therefore must have failed to "muster facts and arguments — as opposed to vague and conclusory allegations — in support of prejudice at the hearing." A13, ¶ 26. But counsel was required to include in the petition any claims that were not "frivolous or patently without merit." *See Johnson*, 2018 IL 122227, ¶ 24 (retained counsel who is "aware of" nonfrivolous claims but refuses to include them in a postconviction petition provides unreasonable assistance). Thus, counsel here was obligated to include the ineffective assistance claim in the postconviction petition so long as it was not frivolous. But not every nonfrivolous claim suffices to "make a substantial showing of a constitutional violation" so as to survive second-stage dismissal, *Agee*, 2023 IL 128413, ¶ 37, and the appellate court erred in assuming that there was more that counsel could have brought to the trial court's attention simply because counsel believed the claim to be nonfrivolous, *Perkins*, 229 Ill. 2d at 50.

In fact, this Court has explained that courts must presume counsel took appropriate steps to find additional evidence and that the lack of

additional evidence is an indication that none existed. *See, e.g.*, *Huff*, 2024 IL 128492, ¶ 24 ("It is presumed from the lack of an amendment that there were none to be made."); *Johnson*, 154 Ill. 2d at 241 ("In the ordinary case, a trial court . . . may reasonably presume that post-conviction counsel made a concerted effort to obtain affidavits in support of the post-conviction claims, but was unable to do so."). This is particularly true where a petitioner fails to "identify any necessary amendments . . . that could have been made by counsel to allow the petition to survive dismissal." *Huff*, 2024 IL 128492, ¶ 24. Here, petitioner has never pointed to additional facts that would have supported his assertion that he would not have accepted the plea deal, and the record rebuts any such notion. Indeed, petitioner explained that he accepted the plea offer because he otherwise faced a sentence of 31 years to life imprisonment on the armed robbery charges that were dismissed pursuant to the plea agreement, and that he would likely lose if he went to trial. R280, 288. Given the sentencing exposure and the strength of the People's case, petitioner's decision to accept a plea offer of 20 years in exchange for the dismissal of the armed robbery charges was more than rational, and nothing about C.J. Baricevic's attendance at a pre-trial meeting with plea counsel would have established that "there is a reasonable probability that . . . [petitioner] would not have pleaded guilty and would have insisted on going to trial." *Lockhart*, 474 U.S. at 58-59.

In short, some postconviction claims, though adequately pleaded and substantiated to the best of counsel's ability, will survive first-stage review and nevertheless fail to make the necessary substantial showing to advance to the third stage. That is the case here.

II. Alternately, Petitioner Must Show that His Retained Counsel's Unreasonable Assistance Prejudiced Him, and the Appellate Court Erred When It Declined to Decide Whether Petitioner Was Prejudiced.

Petitioner's claim also fails because he was required, yet failed, to demonstrate prejudice. As the appellate court recognized, to obtain relief on a claim of unreasonable assistance of retained postconviction counsel, a petitioner "must establish prejudice," meaning that "there is at least a reasonable probability of a different outcome on the petition." A9, ¶ 19 (citing *Zareski*, 2017 IL App (1st) 150836, ¶¶ 59-61).

Requiring that petitioners show prejudice from the unreasonable assistance of retained counsel is consistent with the standard of assistance afforded to postconviction petitioners. As noted, *supra* p. 11, the "reasonable assistance" standard "is significantly lower than the one mandated at trial by our state and federal constitutions." *Custer,* 2019 IL 123339, ¶ 30. Yet even where counsel is constitutionally guaranteed, a petitioner is not entitled to relief based on counsel's deficient performance absent a showing of prejudice, *see Strickland,* 466 U.S. at 694, and the same should be true when retained counsel is merely governed by the Act's reasonableness requirement, *see, e.g.*, *Zareski*, 2017 IL App (1st) 150836, ¶ 54 (noting that "in the constitutional

context, only truly egregious failures allow for a new trial regardless of prejudice" and that "it would be an odd outcome" if postconviction petitioners need not show prejudice). Indeed, *Strickland* presents a "a familiar and manageable framework for evaluating claims of unreasonable assistance where retained counsel filed the defendant's initial postconviction petition." *People v. Perez*, 2023 IL App (4th) 220280, ¶ 54.

This Court has recognized a limited exception to the prejudice requirement and held that a petitioner is not required to show prejudice where he demonstrates that his appointed counsel did not comply with Rule 651(c). *Addison,* 2023 IL 127119, ¶ 37 ("Our case law thus clearly establishes that all postconviction petitioners are entitled to have counsel comply with the limited duties of Rule 651(c) before the merits of their petitions are determined."); *see also People v. Suarez*, 224 Ill. 2d 37, 47 (2007). But this Court reached this conclusion because petitioners are entitled to have their counsel comply with Supreme Court rules. *Id.* ¶ 34. Indeed, the *Addison* Court distinguished cases where counsel's performance was challenged under the Act's general requirement of reasonable assistance, noting that a "comparison with cases considering unreasonable assistance claims at the third stage is illogical, as this court has not prescribed by rule specific duties that counsel must perform at the third stage." *Id.* ¶ 38. Thus, *Addison*'s rule that a showing of prejudice is not required applies only when "counsel's limited duties are prescribed by Illinois Supreme Court rule." *Id.*; *see also*

Zareski, 2017 IL App (1st) 150836, ¶ 55 (explaining that the issue in *Suarez*, where this Court similarly required no showing of prejudice, was that "counsel had violated a supreme court rule"); *People v. Boone*, 2023 IL App (1st) 220433-U, ¶ 57 (reaffirming *Zareski* because *Addison* merely implicated situations where "counsel's performance is governed by Rule 651(c)").

Consistent with *Addison*, the appellate court has repeatedly held that a showing of prejudice is required whenever a petitioner raises a claim of unreasonable assistance of postconviction counsel that falls outside the requirements of Rule 651(c). That includes cases in which the petitioner is represented by retained counsel. *See Zareski,* 2017 IL App (1st) 150836, ¶ 61 ("If we find that the potential claim had no merit, [the petitioner] cannot receive postconviction relief on that claim, regardless of whether [retained counsel] should have presented it earlier, better, or at all."); *People v. Delgado*, 2022 IL App (2d) 210008, ¶ 20 (same); *Perez*, 2023 IL App (4th) 220280, ¶ 54 ("Where Rule 651(c) does not apply, to justify a remand on a claim of unreasonable assistance, a defendant must identify some meritorious postconviction claim that he or she lost due to counsel's conduct."). It also applies in cases where postconviction counsel, whether appointed or retained, is alleged to have provided unreasonable assistance at a third-stage hearing. *See People v. Pabello*, 2019 IL App (2d) 170867, ¶¶ 36, 44 (petitioner failed to show unreasonable assistance based on postconviction counsel's failure to present evidence at third-stage hearing where petitioner was not prejudiced);

People v. Hotwagner, 2015 IL App (5th) 130525, ¶¶ 37, 51 (same).

Accordingly, to succeed on his unreasonable assistance claim, petitioner needed to show that he was prejudiced. But none of petitioner's claims — that (1) he was improperly admonished regarding consecutive sentences, violating due process; (2) the trial court failed to make findings to support consecutive sentences, also violating due process; and (3) plea counsel was ineffective — could have succeeded "regardless of how postconviction counsel presented" them. *Delgado*, 2022 IL App (2d) 210008, ¶ 20. Accordingly, his retained counsel's performance, even if unreasonable, does not warrant a remand here.

Petitioner's claims regarding his consecutive sentences are meritless because they are rebutted by the record. The record shows that petitioner was sufficiently admonished that, had he gone to trial, he could have received consecutive sentences. The plea agreement, as explained by the People, recommended a sentence of "ten with a consecutive ten, for a total of twenty" years. R231. The trial court then admonished petitioner that the sentence for each aggravated battery count — had he gone to trial — was 6 to 30 years imprisonment, and that the trial court had the discretion to run the "the sentences together or all at the same time." R233-34. Petitioner indicated that he understood. R234. In acknowledging his understanding, and in light of his plea agreement expressly contemplating the imposition of consecutive 10-year sentences, the trial court complied with Supreme Court Rule 402(a),

and therefore with the due process requirement that a guilty plea be knowing and voluntary, because petitioner understood the nature of the sentences he was foregoing. *See People v. Fuller*, 205 Ill. 2d 308, 322 (2002); *People v. Burt*, 168 Ill. 2d 49, 64 (1995) (noting that "substantial compliance with [Rule 402(a)] is sufficient to satisfy due process"). Given that the record affirmatively rebuts petitioner's admonishment claim, no counsel could have sufficiently pleaded the issue to survive second-stage review, and petitioner suffered no prejudice.

Petitioner further alleged that the trial court erred by not finding that the consecutive sentences to which he agreed were necessary to protect the public. C372-73. But such a finding was not required because petitioner stipulated at the plea hearing that he inflicted "great bodily harm" when he shot the victim in the back and his codefendant shot the victim in the leg, R238-39, making consecutive sentences mandatory, 720 ILCS 5/5-8-4(d)(1) (mandating consecutive sentences for Class X felonies where the defendant inflicted "severe bodily injury"); *People v. Witherspoon,* 379 Ill. App. 3d 298, 308 (4th Dist. 2008) ("The difference between 'great bodily harm' and 'severe bodily injury' is merely semantic[.]"); *see also People v. Phelps,* 211 Ill. 2d 1, 15 (2004) (treating elements of "severe bodily injury" and "great bodily harm" as identical). And, regardless, petitioner waived any challenge to the sentence he received when he pleaded guilty. *People v. Jones,* 2021 IL 126432, ¶¶ 20-21. He therefore could not have received relief on his claim

and counsel's allegedly unreasonable assistance did not prejudice petitioner.

Petitioner's ineffective assistance of plea counsel claim is equally meritless, because regardless of postconviction counsel's efforts, petitioner could not satisfy *Strickland's* prejudice prong. To demonstrate prejudice, a petitioner "must show there is a reasonable probability that, absent counsel's alleged errors, [he] would have pled not guilty and insisted on going to trial." *Agee*, 2023 IL 128413, ¶ 51 (citations omitted). "A conclusory allegation that [the petitioner] would not have pled guilty and would have demanded a trial is insufficient to establish prejudice." *Id*. Instead, the petitioner "must show that he would have been better off going to trial because he would have been acquitted or had a viable defense." *People v. Hatter,* 2021 IL 125981, ¶ 26; *see also People v. Hall,* 217 Ill. 2d 324, 336 (2005); *People v. Rissley,* 206 Ill. 2d 403, 459-60 (2003).

Here, petitioner cannot show that he would have been better off going to trial. To the contrary, the plea deal was the best option he had. Had petitioner gone to trial and been convicted, he would have faced a sentence of 31 years to life. R234-35, R280. And, as petitioner acknowledged, R288, he surely would have been convicted. At the plea hearing, petitioner agreed that the trial evidence would show that: petitioner and his codefendant forced two victims into a house, petitioner ransacked the house and shot one of the victims in the back, petitioner confessed to his girlfriend, identification belonging to one of the victims was later found on petitioner, and the victim

positively identified petitioner. R236-37. Petitioner also agreed that he was accountable for his codefendant's act of shooting the victim, and that he and his codefendant inflicted great bodily harm on the victim. R238-39.

Faced with these facts, petitioner cannot "show that he would have been better off going to trial because he would have been acquitted or had a viable defense." *Hatter*, 2021 IL 125981, ¶ 26. Indeed, petitioner conceded that he believed he likely would have been convicted at trial, R288, and that he could think of nothing else his plea counsel could have done to increase his chance of success, R281-82. Petitioner's decision to accept two consecutive 10-year sentences in exchange for his guilty plea and the dismissal of additional counts carrying a sentence up to life imprisonment was rational, and petitioner can provide no explanation why he would have gone to trial and risked a life sentence but for C.J. Baricevic's attendance at a pre-trial meeting. Accordingly, even if retained postconviction counsel performed unreasonably, petitioner suffered no prejudice.

Given the clear lack of merit to petitioner's claims, the appellate court erred when it concluded that it could not determine whether petitioner was prejudiced "because of a paucity of the record *caused by* postconviction counsel's lack of reasonable assistance[.]" A10, ¶ 21 (emphasis in original). The court faulted counsel for failing to provide more than "conclusory" support for petitioner's assertion that he would have gone to trial and for failing to "explain how a decision to reject the plea bargain would have been

rational under the circumstances of this case." A12, ¶ 24. Rather than assuming that counsel could have provided additional factual support for petitioner's claim, however, the appellate court should have presumed that the lack of additional factual support meant that none exists. *See, e.g.*, *Huff*, 2024 IL 128492, ¶ 24; *Agee*, 2023 IL 128413, ¶ 65; *Johnson*, 154 Ill. 2d at 241.

Had the appellate court correctly presumed that counsel's inability to provide evidence sufficient for the ineffective assistance claim to survive second-stage review meant that no additional evidence existed, it would have concluded that petitioner was not prejudiced by his counsel's performance. Thus, contrary to the appellate court's holding, no remand is necessary.

III. The Appellate Court Impermissibly Interfered with Petitioner's Right to Choose his Counsel when It Remanded for Further Proceedings with New Counsel.

If this Court were to hold that a remand is appropriate, it should nevertheless reverse the portion of the appellate court's judgment remanding for further proceedings "with new counsel," A14, ¶ 29, because the court had no authority to grant petitioner appointed counsel absent a showing that petitioner is indigent, nor to order petitioner to hire new counsel.

The Act provides that "[a]t the second stage of postconviction proceedings, counsel may be appointed for defendant, if defendant is indigent." *People v. Pendleton*, 223 Ill. 2d 458, 472 (2006); *see also* 725 ILCS 5/122-4 (trial court may appoint counsel if petitioner requests it and court is "satisfied that the petitioner has no means to procure counsel"). Petitioner has not sought the appointment of counsel, and no showing has been made

that he lacks the means to procure counsel. Accordingly, the appellate court erred to the extent that it purported to grant petitioner appointed counsel on remand.

To the extent that the appellate court instead meant to require petitioner to retain new counsel, the court impermissibly interfered with petitioner's right to counsel of choice. *See People v. Pecoraro*, 144 Ill. 2d 1, 15 (1991) (where defendant was represented by retained counsel, "the trial judge could not force defendant to retain counsel other than that chosen by defendant"); *People v. Miles,* 176 Ill. App. 3d 758, 772 (1st Dist. 1988) (trial court "has no power to dismiss a privately retained attorney"). To be sure, petitioner would be free on remand to hire new counsel or petition the trial court for the appointment of counsel, but the appellate court overstepped its authority when it mandated that petitioner do so. Accordingly, should this Court find remand appropriate, it should reverse this portion of the trial court's judgment.

CONCLUSION

This Court should reverse the appellate court's judgment and affirm the trial court's judgment dismissing petitioner's postconviction petition. Alternatively, if the Court deems a remand appropriate, it should nonetheless reverse that portion of the appellate court's judgment requiring that petitioner be represented by new counsel on remand.

February 14, 2024

Respectfully submitted,

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RULE 341(c) CERTIFICATE OF COMPLIANCE

I certify that this brief conforms to the requirements of Rules 341(a) and (b). The length of this brief, excluding the pages containing the Rule 341(d) cover, the Rule 341(h)(1) table of contents and statement of points and authorities, the Rule 341(c) certificate of compliance, the certificate of service, and those matters to be appended to the brief under Rule 342(a), is 28 pages.

s/Mitchell J. Ness
Mitchell J. Ness

APPENDIX

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2023 IL App (5th) 220185-U

NO. 5-22-0185

THE IN

APPELLATE COURT OF ILLINOIS

FIFTH DISTRICT

THE PEOPLE OF THE STATE OF ILLINOIS,	)	Appeal from the
	)	Circuit Court of
Plaintiff-Appellee,	)	St. Clair County.
	)	
v.	)	No. 09-CF-1299
	)	
MICHAEL A. WILLIAMS,	)	Honorable
	)	Julie K. Katz,
Defendant-Appellant.	)	Judge, presiding.

JUSTICE MOORE delivered the judgment of the court.
Justices Welch and Cates concurred in the judgment.

ORDER

¶ 1 *Held*: Because the defendant did not receive reasonable assistance of counsel with regard to his verified petition for postconviction relief, we reverse the order of the circuit court of St. Clair County that dismissed the defendant's petition at the second stage of proceedings, and we remand for further second-stage proceedings with new counsel.

¶ 2 The defendant, Michael A. Williams, entered negotiated pleas of guilty to two counts of aggravated battery with a firearm. He was sentenced to two consecutive 10-year terms of imprisonment in the Illinois Department of Corrections. He thereafter tried, without success, to withdraw his guilty plea. He now appeals the dismissal, by the circuit court of St. Clair County at the second stage of proceedings, of his verified petition for postconviction relief. For the reasons that follow, we reverse the circuit court's order and remand for further second-stage proceedings with new counsel.

¶ 3 I. BACKGROUND

¶ 4 On September 23, 2021, counsel for the defendant filed the verified postconviction petition (PCP) that is the subject of this appeal. Prior to that, on January 21, 2021, PCP counsel filed an entry of appearance for purposes of subsequently filing the PCP. The PCP alleged that the defendant's constitutional rights "were substantially denied" in that (1) the defendant was denied due process because he was not properly admonished by the circuit court as to the possibility of consecutive sentences for the offenses to which he entered his pleas of guilty; (2) the defendant was denied due process because the circuit court handed down consecutive sentences without indicating, as required by law, that the circuit court found that the consecutive sentences were required to protect the public; and (3) he received ineffective assistance of counsel, because his plea counsel allowed the son of the judge presiding over the defendant's case to accompany plea counsel to a jail visit with the defendant at which "important points" related to the defendant's case were discussed in what should have been "a privileged" meeting. The relief requested by the PCP was that the defendant's "judgment of conviction and sentence be set aside." Also on September 23, 2021, counsel filed a certificate of compliance with Illinois Supreme Court Rule 651(c) (eff. July 1, 2017), in which he stated that he had consulted with the defendant "by telephone and in person," and that he had "examined the trial record to ascertain [the defendant's] contentions of deprivation of constitutional rights." He further noted that the defendant "did not file a *pro se* petition."

¶ 5 Counsel filed supporting documents on that date as well, including a two-page handwritten affidavit from the defendant in which the defendant claimed, with regard to the admonishments he received about consecutive sentences, that he did not "understand what the court meant" when the court advised the defendant that the court "could sentence [him] together or at the same time." With regard to ineffective assistance of counsel, the defendant's affidavit alleged that he "could

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not continue to trial" with his previous counsel, after that counsel brought the son of the judge presiding over the case to a meeting with the defendant. The affidavit further alleged that the defendant told his new counsel, who represented the defendant on the defendant's motion to withdraw his guilty pleas, about the situation with his prior counsel, but new counsel failed to include the issue in the motion to withdraw the guilty pleas.

¶ 6 On October 7, 2021, the circuit court entered an order in which it found that the PCP raised "the gist of at least one constitutional claim," and which therefore ordered second-stage proceedings on the PCP. The order did not specify upon which claim or claims the circuit court believed the PCP raised the gist of a claim. On November 16, 2021, the State filed a motion to dismiss the PCP. Therein, the State contended that, *inter alia*, (1) the defendant was "unable to establish that he suffered prejudice as a result of" the allegedly defective admonishments, because the defendant "received exactly what he bargained for by way of the plea negotiations," and because the PCP was devoid "of any allegation that he would not have pleaded guilty had he received the proper admonishments, the trial court did not impose a sentence that exceeded the range of penalties he was told he could receive, and he received the exact sentence that was jointly recommended"; (2) all of the defendant's PCP claims were barred by *res judicata* and the forfeiture doctrine, because the defendant did not raise the claims in his direct appeal; (3) consecutive sentences were mandatory in this case, in light of the great bodily injury suffered by the victim, which means that the circuit court was not required to indicate that it believed consecutive sentences were necessary to protect the public; (4) the PCP failed to allege how plea counsel's assistance was defective, and failed to allege that the defendant was prejudiced by the alleged ineffective assistance of plea counsel, or of counsel who represented him on his motion to withdraw his guilty pleas; and (5) the PCP "further fail[ed] to articulate that, but for trial counsel's ineffectiveness, [the defendant] would not have entered into his negotiated plea[s]."

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¶ 7 More than three months later, on February 18, 2022, a hearing was held on the State's motion to dismiss. Prior to the hearing, PCP counsel did not file a written response to the State's motion, and did not request leave to amend the PCP. At the hearing, the State elected to stand on the arguments it made in its written motion to dismiss. The remainder of the hearing—which comprises a total of seven transcript pages in the record on appeal—consisted of a brief statement by PCP counsel with regard to the motion to dismiss, followed by detailed questioning by the circuit court of PCP counsel. With regard to the State's *res judicata* and forfeiture arguments, PCP counsel stated that although it was true that the issues in question were not raised on direct appeal, counsel wanted the circuit court "to consider fundamental fairness in allowing [the defendant] to receive [a third-stage] evidentiary hearing on" the admonishment claims. Counsel added that he did not believe that the defendant's ineffective assistance of counsel claims were barred, "because they contain matters that were outside the record," the claims were "not apparent in the record themselves," and the defendant "filled out an affidavit stating those claims."

¶ 8 The circuit court then asked counsel to explain why on direct appeal the defendant "was not able to argue to the Appellate Court that he was denied effective assistance of counsel because what he alleges is the judge's son going to the jail with [the defendant's] attorney to talk to him about his case?" Counsel answered as follows:

> "Yeah, and that's why I think that we need [a third-stage] evidentiary hearing on it, Judge. I don't know from the appellate counsel's filings and stuff whether, you know, they had talked about that but he certainly alleges it now. I don't know—I know that, you know, obviously this is all, you know, outside the record stuff so I'm not 100 percent sure on the direct appeal issue, Judge."

¶ 9 The circuit court noted the State's arguments with regard to this issue in its motion to dismiss, then added as follows:

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> "You've got to satisfy the two prongs of *Strickland* and I'm not seeing the nexus between what about the fact that CJ Baricevic if, in fact, he did visit your client at the St. Clair County Jail [along with the defendant's plea counsel], what about that that satisfies either of the prongs of *Strickland*? How—what did it have to do with the fact that he ultimately pled guilty?"

¶ 10 Counsel answered that his argument would be that because the defendant's affidavit stated that the defendant "could not continue to trial" with plea counsel after learning that CJ Baricevic was the son of the judge presiding over the case, the affidavit did in fact "satisfy both prongs of *Strickland*, that he would have went [*sic*] to trial but for this incident." He did not elaborate on why he believed this was true, or how, specifically, the affidavit satisfied the *Strickland* prongs. The circuit court thereafter stated, *inter alia*, "you have to I think at this stage show more than just 'oh, I would have.' There needs to be a stronger showing *** [of] what defense he would have posed if he had gone to trial and why he would have gone to trial and risk[ed] a life sentence." The circuit court added, "So go ahead, talk to me about that." PCP counsel asked for clarification of the circuit court's question. The circuit court responded as follows:

> "Ultimately he got 20, he got two 10-year sentences, but tell me—he has to do more than say 'I would have gone to trial.' He has to establish some reasonable defense that he would have posed that would convince me that he would have in fact gone to trial rather than to take a plea of guilty when he was facing the possibility of a life sentence. He was instead given two 10-year consecutive sentences. So what would—tell me why I should believe that he would have gone to trial rather than take that plea."

¶ 11 PCP counsel stated, "Well, I think he was sitting in there and he found out that Mr. Baricevic was the son of the trial judge and he felt pressured in that situation that, you know, he couldn't continue with [plea counsel] in that having this situation had occurred." Counsel added,

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"So I mean I think that that there tells the Court that he would have went [*sic*] to trial but for this incident." The circuit court asked the State if it had anything to add. The State opined, as it did in its written motion, that "the prejudice prong of the *Strickland* test hasn't been satisfied at this point in time." Thereafter, the circuit court stated that it would take the matter under advisement and issue a decision within, approximately, one week.

¶ 12 On February 22, 2022, the circuit court entered the written order that is the subject of this appeal. Therein, the circuit court found that the defendant "failed to make a substantial showing of a constitutional violation for the reasons set forth by the State in its motion to dismiss." Accordingly, the circuit court granted the State's motion to dismiss. This timely appeal followed. Additional facts will be presented as necessary in the remainder of this order.

¶ 13 II. ANALYSIS

¶ 14 It is well established that most petitions filed under the Post-Conviction Hearing Act (725 ILCS 5/122-1 *et seq.* (West 2020)) are filed by *pro se* defendants with limited legal knowledge. See, *e.g.*, *People v. Allen*, 2015 IL 113135, ¶ 24. In those situations, when a petition for postconviction relief advances—as did the PCP in this case—to the second stage of proceedings, a *pro se* defendant is entitled to the appointment of counsel to assist the defendant. *People v. Wallace*, 2018 IL App (5th) 140385, ¶ 27. Appointed counsel may file an amended petition, and the State may file a motion to dismiss or an answer. *Id.* If the petition makes a substantial showing of a constitutional violation, it will be advanced to the third stage of proceedings, which ordinarily involves an evidentiary hearing on the defendant's claims. *Id.*

¶ 15 The source of the defendant's right to counsel at the second stage of proceedings is statutory rather than constitutional, and as a result, the level of assistance guaranteed is not the same as the level of assistance constitutionally mandated at trial or on direct appeal; instead, the level of assistance required is reasonable assistance. *Id.* ¶ 29. To provide reasonable assistance at

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the second stage of proceedings, appointed postconviction counsel is required to perform the three duties set forth in Illinois Supreme Court Rule 651(c) (eff. July 1, 2017). *Id.* ¶ 30. Appointed counsel must (1) consult with the defendant to determine the claims the defendant wants to raise, (2) examine the appropriate portions of the record, and (3) make any amendments to the petition that are necessary in order to adequately present the defendant's claims to the circuit court. *Id.*

¶ 16 The filing, by appointed postconviction counsel, of a certificate of compliance with Rule 651(c) creates a rebuttable presumption that counsel has provided the statutorily required reasonable level of assistance. *Id.* ¶ 31. We review *de novo* the question of whether appointed counsel provided the reasonable level of assistance that is required. *Id.* If we determine that appointed postconviction counsel failed to provide reasonable assistance, we will remand for further second-stage proceedings on the petition, with new counsel to be appointed to represent the defendant on remand. *Id.* ¶ 53.

¶ 17 As we undertake our *de novo* review of whether appointed postconviction counsel provided reasonable assistance, we remain mindful of the fact that substantial compliance with Rule 651(c) is sufficient. See, *e.g.*, *People v. Profit*, 2012 IL App (1st) 101307, ¶ 18. We also remain mindful of the fact that the presumption of reasonable assistance that arises with the filing of a Rule 651(c) certificate may be rebutted by the record. *People v. Russell*, 2016 IL App (3d) 140386, ¶ 10. The failure to make a routine amendment, such as an amendment adding a claim of ineffective assistance of appellate counsel in order to prevent the dismissal of a petition on the basis of waiver or forfeiture, is an example of conduct on the part of postconviction counsel that rebuts the presumption of reasonable assistance. *Id.* ¶ 11. Moreover, there is no requirement that a defendant make a positive showing that appointed counsel's failure to comply with Rule 651(c) caused prejudice, because if appointed postconviction counsel failed to fulfill the duties of Rule 651(c), remand is required, regardless of whether the claims raised by the defendant in the petition

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had merit. *Id.* ¶ 12. Likewise, appointed counsel's failure to comply with the rule will not be excused on the basis of harmless error, because a reviewing court will not engage in speculation as to whether the circuit court would have dismissed the petition at the second stage had appointed counsel complied with the rule. *Id.*

¶ 18 Although, as noted above, the foregoing law is applicable in situations where counsel has been appointed to assist a defendant who initially filed a *pro se* postconviction petition, a line of cases from this court holds that there are important differences where, as in this case, counsel who was privately retained by the defendant filed the initial petition. This line of cases does not dispute the fact that, as a general proposition, the Illinois Supreme Court has held that "there is no difference between appointed and privately retained counsel in applying the reasonable level of assistance standard to postconviction proceedings," because "[b]oth retained and appointed counsel must provide reasonable assistance to their clients after a petition is advanced from first-stage proceedings." *People v. Cotto*, 2016 IL 119006, ¶ 42. That said, the Illinois Supreme Court has made it equally clear that Illinois Supreme Court Rule 651(c) (eff. July 1, 2017), which requires counsel to consult with a defendant regarding the defendant's postconviction petition, applies only to those defendants who file their initial petition *pro se* and who are appointed counsel at the second stage of proceedings. *Id.* ¶ 41; see also *People v. Johnson*, 2018 IL 122227, ¶ 18. When the initial petition is filed by retained counsel, Rule 651(c) does not apply, and retained counsel's performance is governed by a general standard of reasonable assistance that does not incorporate the requirements of Rule 651(c). *People v. Zareski*, 2017 IL App (1st) 150836, ¶¶ 51, 58-61; see also *People v. Perez*, 2023 IL App (4th) 220280, ¶¶ 40-57 (agreeing with *Zareski* and finding no conflict between *Zareski* and subsequent Illinois Supreme Court decisions).

¶ 19 Accordingly—unlike in cases involving appointed counsel—under *Zareski* and its progeny, to obtain relief for a violation of the general standard of reasonable assistance recognized

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in *Zareski*, a defendant must establish prejudice as a result of the alleged unreasonable assistance of retained counsel. 2017 IL App (1st) 150836, ¶¶ 59-61. This requirement is derived from the principle that "[s]trictly speaking, a defendant is entitled to less from postconviction counsel than from direct appeal or trial counsel," which means "that it should be even more difficult for a defendant to prove that he or she received unreasonable assistance than to prove that he or she received ineffective assistance under [the standards set forth in *Strickland v. Washington*, 466 U.S. 668 (1984)]." *Id.* ¶ 50. The prejudice requirement exists to "prevent pointless remands to trial courts for repeated evaluation of claims that have no chance of success." *Id.* ¶ 59. In evaluating prejudice, *Zareski* and the cases following it apply the *Strickland* standard, inquiring whether there is at least a reasonable probability of a different outcome on the petition, had counsel provided reasonable assistance. *Id.* ¶ 49; see also *Perez*, 2023 IL App (4th) 220280, ¶¶ 54, 67, 71. As with appointed counsel, we review *de novo* the ultimate question of whether retained postconviction counsel provided unreasonable assistance. See, *e.g.*, *People v. Suarez*, 224 Ill. 2d 37, 41-42 (2007).

¶ 20 In this case, following supplemental briefing at the appellate level, counsel for the defendant urges this court not to follow *Zareski*, which counsel claims is poorly reasoned and leads to "absurd" and unfair results, such as providing more protection to a defendant who has filed a *pro se* petition than to a defendant who has been "able to scrape up enough money to" retain counsel, because pursuant to *Zareski*, the former type of defendant need not show prejudice resulting from unreasonable assistance of counsel at the second stage of proceedings, whereas a showing of prejudice is required of the latter type of defendant. The State's supplemental brief, on the other hand, urges us to follow *Zareski* and affirm the dismissal of the PCP in this case. The defendant's supplemental reply brief reiterates the defendant's contention that *Zareski* is hopelessly flawed and should not be followed.

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¶ 21 After careful consideration of the Illinois decisions relevant to this issue, we conclude that we need not decide whether to follow *Zareski*, because we conclude that even if we were to assume, *arguendo*, that *Zareski* was correctly decided and should govern this appeal, the reasoning put forward in an unpublished decision by our colleagues in the First District persuades us that in certain rare and limited circumstances—the overall validity of *Zareski* notwithstanding—it is appropriate to depart from the *Zareski* requirement that a defendant must establish prejudice as a result of the allegedly unreasonable performance of retained counsel. In *People v. Johnson*, 2022 IL App (1st) 190258-U, ¶¶ 33-43, our colleagues in the First District concluded that, the well-reasoned analysis of *Zareski* notwithstanding, if it is clear from the record that the defendant did not receive reasonable assistance of postconviction counsel, and it is equally clear that, because of a paucity of the record *caused by* postconviction counsel's lack of reasonable assistance, the appellate court cannot tell whether the defendant was prejudiced thereby, the appropriate remedy is for the appellate court to reverse the order dismissing the petition, and to remand for further second-stage proceedings with new counsel. The *Johnson* court concluded that remand was required in that case because (1) no affidavits or other documents were attached to the petition, and no explanation was given for their absence, as well as because (2) "counsel's pleadings, statements, unreasonable delays, and general performance throughout" the proceedings amounted to "a multitude of errors." *Id.* ¶¶ 36-39. The *Johnson* court further concluded that the "straightforward application of *Zareski* [was] impossible *** due to the emptiness of the record, an emptiness which clearly stem[med], at least in part, from Mr. Johnson's attorney's performance." *Id.* ¶¶ 35, 41. Likewise, in this case, for the reasons that follow, we decline to conclude that the defendant's failure to demonstrate that he was prejudiced by the unreasonable assistance of PCP counsel results in forfeiture, or means that we should summarily affirm the circuit court's dismissal of the PCP.

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¶ 22 In this case, as explained above, the relief requested by the PCP was that the defendant's "judgment of conviction and sentence be set aside." In other words, the defendant sought to withdraw his guilty plea, which is the act that led to his judgment of conviction and sentence. It is axiomatic that when a defendant wishes to withdraw a guilty plea on the basis of alleged ineffective assistance of plea counsel, the defendant must satisfy the prejudice prong of *Strickland*, which means that, "in the guilty plea context, 'the defendant must show that there is a reasonable probability that, but for counsel's errors, he would not have pleaded guilty and would have insisted on going to trial.' " *People v. Valdez*, 2016 IL 119860, ¶ 29 (quoting *Hill v. Lockhart*, 474 U.S. 52, 59 (1985)); see also *People v. Brown*, 2017 IL 121681, ¶ 47. "A conclusory allegation that a defendant would not have pleaded guilty and would have demanded a trial is insufficient to establish prejudice." *Valdez*, 2016 IL 119860, ¶ 29. To the contrary, to obtain relief on such a claim, in most cases a defendant " 'must convince the court that a decision to reject the plea bargain would have been rational under the circumstances.' " *Id.* (quoting *Padilla v. Kentucky*, 559 U.S. 356, 372 (2010)).

¶ 23 As described above, the State argued in its motion to dismiss that one reason the PCP should be dismissed was because the PCP was devoid "of any allegation that [the defendant] would not have pleaded guilty had he received the proper admonishments." The State also argued that the PCP failed to allege how plea counsel's assistance was defective, and failed to allege that the defendant was prejudiced by the alleged ineffective assistance of plea counsel, or of counsel who represented him on his motion to withdraw his guilty pleas. The State argued as well that the PCP "further fail[ed] to articulate that, but for trial counsel's ineffectiveness, [the defendant] would not have entered into his negotiated plea[s]." Also as described above, prior to the hearing on the State's motion to dismiss, PCP counsel did not file a written response to the State's motion, and

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did not request leave to amend the PCP. More than three months later, at the hearing on the motion to dismiss, the circuit court noted the State's written arguments, then added as follows:

> "You've got to satisfy the two prongs of *Strickland* and I'm not seeing the nexus between what about the fact that CJ Baricevic if, in fact, he did visit your client at the St. Clair County Jail [along with the defendant's plea counsel], what about that that satisfies either of the prongs of *Strickland*? How—what did it have to do with the fact that he ultimately pled guilty?"

¶ 24 PCP counsel answered that his argument would be that because the defendant's affidavit stated that the defendant "could not continue to trial" with plea counsel after learning that CJ Baricevic was the son of the judge presiding over the case, the affidavit did in fact "satisfy both prongs of *Strickland*, that he would have went [*sic*] to trial but for this incident." Beyond this conclusory allegation, he did not elaborate on why he believed this was true, or how, specifically, the affidavit satisfied the *Strickland* prongs pursuant to the precedent cited above. He did not, at any point, attempt to explain how a decision to reject the plea bargain would have been rational under the circumstances of this case, which, of course, is another point that was not addressed by the defendant in his two-page handwritten affidavit *at all*. The circuit court alluded to this when it noted that "you have to I think at this stage show more than just 'oh, I would have.' There needs to be a stronger showing." After further discussion, the circuit court stated explicitly to PCP counsel, "tell me why I should believe that he would have gone to trial rather than take that plea."

¶ 25 PCP counsel stated, "Well, I think he was sitting in there and he found out that Mr. Baricevic was the son of the trial judge and he felt pressured in that situation that, you know, he couldn't continue with [plea counsel] in that having this situation had occurred." Counsel added, "So I mean I think that that there tells the Court that he would have went [*sic*] to trial but for this incident." The circuit court asked the State if it had anything to add. The State opined, as it did in

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its written motion, that "the prejudice prong of the *Strickland* test hasn't been satisfied at this point in time." Also as explained above, in the circuit court's written order, the circuit court expressly stated that the PCP failed "for the reasons set forth by the State in its motion to dismiss."

¶ 26 In light of the deeply-rooted principles of law, cited above and applicable when a defendant wishes to withdraw a guilty plea on the basis of alleged ineffective assistance of plea counsel, PCP counsel's performance in the written PCP and its supporting documents, and in response to the State's motion to dismiss the PCP, was objectively unreasonable where he put forward such a claim but (1) in the PCP, entirely failed to allege—and support factually—the prejudice required as an element of that claim, and (2) when this was brought to PCP counsel's attention by the State's motion to dismiss, PCP counsel filed no written response or request to amend the PCP, and at the hearing on the motion was unprepared to address this problem in accordance with the law related to the problem, despite the fact that more than three months had elapsed since the filing of the State's motion. PCP counsel's failure to include the required allegations and factual support in the PCP and the defendant's accompanying affidavit, and his complete inability to muster facts and arguments—as opposed to vague and conclusory allegations—in support of prejudice at the hearing, meant that the defendant's PCP claim of ineffective assistance of counsel had no chance of succeeding. Moreover, PCP counsel's pleading failure has led to a paucity of the record that, as was the case in *Johnson*, makes it impossible for this court to determine if the defendant suffered prejudice as a result of PCP counsel's unreasonable assistance, because the result of PCP counsel's pleading failure is that there are no factual allegations from which this court could determine whether a decision to reject the plea bargain would have been rational under the circumstances of this case. Equally objectively unreasonable was PCP counsel's failure to argue—and support factually—claims of ineffective assistance of previous counsel as a means to overcome the bars of *res judicata* and forfeiture that the State raised in its motion to dismiss. See, *e.g.*, *People v.*

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Kluppelberg, 327 Ill. App. 3d 939, 947 (2002); see also, *e.g.*, *People v. Russell*, 2016 IL App (3d) 140386, ¶ 11 (failure to make routine amendment, such as amendment adding claim of ineffective assistance of previous counsel in order to prevent the dismissal of petition on basis of waiver or forfeiture, constitutes unreasonable assistance). This inaction, too, doomed the PCP to failure.

¶ 27 We note that counsel for the defendant on appeal is correct that it is well established that postconviction counsel is prohibited from advancing claims in the circuit court that counsel determines are frivolous and patently without merit. See, *e.g.*, *People v. Greer*, 212 Ill. 2d 192, 209 (2004). Thus, PCP counsel must have believed that the claims in the PCP had merit. Yet, inexplicably, counsel did not plead, or argue, the basic elements necessary to sustain the claims, even after these deficiencies were noted in the State's motion to dismiss. See, *e.g.*, *People v. Al Momani*, 2016 IL App (4th) 150192, ¶ 12 (when State files motion to dismiss postconviction petition, defendant has due process right to respond to State's motion; right may "be satisfied by allowing a hearing on the motion or by allowing defendant to file a written response to the motion"). The inescapable conclusion in this case is that PCP counsel provided unreasonable assistance of counsel when he drafted the PCP, and when he attempted to defend the PCP against the State's motion to dismiss it, and that PCP counsel's failures have left this court—like the court in *Johnson*—with a record that makes it impossible to determine whether the defendant was prejudiced by PCP counsel's multiple failures.

¶ 28 III. CONCLUSION

¶ 29 For the foregoing reasons, we reverse the order of the circuit court of St. Clair County that dismissed the PCP, and we remand for further second-stage proceedings with new counsel. We direct appellate counsel to provide copies of their briefs to circuit court counsel (including new postconviction counsel), and to the circuit court. See, *e.g.*, *People v. Bell*, 2018 IL App (4th) 151016, ¶ 37. We reiterate that it is well established that postconviction counsel is prohibited from

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amending a petition to advance claims in the circuit court that counsel determines are frivolous and patently without merit. See, *e.g.*, *Greer*, 212 Ill. 2d at 209. Illinois courts of review have made it clear what counsel must do if, after the circuit court advances a petition to the second stage because the circuit court believes that the petition is not frivolous or is not patently without merit, counsel subsequently determines that it is. See, *e.g.*, *People v. Kuehner*, 2015 IL 117695, ¶¶ 20-22, 24, 27; see also, *e.g.*, *People v. Dixon*, 2018 IL App (3d) 150630, ¶¶ 21-22 (if counsel finds claims in petition are frivolous or patently without merit, the appropriate procedure is to stand on *pro se* petition or seek to withdraw as counsel). We remind new counsel of these principles of law and admonish new counsel to adhere to them when considering what claims, if any, legitimately may be advanced in this case.

¶ 30 Reversed; cause remanded with directions.

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State of Illinois

IN THE TWENTIETH JUDICIAL CIRCUIT, ST. CLAIR COUNTY, BELLEVILLE, ILLINOIS

PLAINTIFF PEOPLE

vs.

Defendant MICHAEL A. WILLIAMS

No. 09-CF-1299

FILED
ST. CLAIR COUNTY
FEB 22 2022
CIRCUIT CLERK

ORDER

This cause coming before the Court; the Court being fully advised in the premises and having jurisdiction of the subject matter;

The Court finds: Parties appear in open court; Court hears

IT IS THEREFORE ORDERED: argument with regard to the State's Motion to Dismiss; Court finds that the Defendant has failed to make a substantial showing of a constitutional violation for the reasons set forth by the State in its Motion to Dismiss;

IT IS ORDERED that the State's Motion to Dismiss is granted. Case dismissed.

Attorneys:

Enter:

Jason Emmanuel, Asst. State's Atty.
Plaintiff

Ryan Martin, atty for D
Defendant

Julie K Katz
Judge

White—CC; Yellow—Plaintiff; Pink—Defendant

CC-14-95

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IN THE CIRCUIT COURT OF THE TWENTIETH JUDICIAL CIRCUIT
ST. CLAIR COUNTY, ILLINOIS

PEOPLE OF THE STATE OF ILLINOIS, Respondent,	)	
vs.	)	Circuit Court No. 09CF0129901
MICHAEL A. WILLIAMS, Defendant.	)	

VERIFIED PETITION FOR POST-CONVICTION RELIEF

COMES NOW Petitioner, Michael Williams, by and through counsel, Ryan Martin, and respectfully requests relief pursuant to the Illinois Post Conviction Hearing Act, 725 ILCS 5/112-1 *et seq.*, and in support of this relief, Petitioner states the following:

Procedural History

1. Petitioner is currently incarcerated at the Centralia Correctional Center.
2. On November 13, 2009, Petitioner was charged by criminal complaint with two counts of armed robbery and two counts of aggravated battery with a firearm.
3. On December 9, 2009, the State filed a criminal indictment charging Petitioner with two counts of armed robbery and two counts of aggravated battery with a firearm.
4. On March 7, 2011, Petitioner entered a plea of guilty to both counts of aggravated battery with a firearm and was sentenced to 10 years on each count to run consecutively.
5. On March 21, 2011, Petitioner filed a *pro se* motion to withdraw his guilty plea.
6. On March 24, 2011, the trial court entered an order denying Petitioner's motion to withdraw his guilty plea.
7. On August 23, 2012, the Fifth District Court of Appeals vacated the trial court's judgment and remanded the cause for further proceedings on the grounds that the trial court had failed to advise Petitioner that he had a right to have counsel represent him on

his motion to withdraw his guilty plea and had failed to inquire as to whether he wished to waive that right.

8. On February 20, 2013, appointed counsel filed a motion to withdraw Petitioner's guilty plea along with a certificate of compliance with Rule 604(d) and the Court denied the motion the same day.
9. On July 29, 2013, the Fifth District Court of Appeals again vacated the trial court's judgment and remanded the cause for further proceedings on the grounds that appointed counsel's Rule 604(d) certificate was defective.
10. On August 20, 2015, appointed counsel filed a new motion to withdraw Petitioner's guilty plea along with a new Rule 604(d) certificate.
11. On November 12, 2015, the trial court denied Petitioner's motion to withdraw his guilty plea.
12. On September 13, 2018, the Fifth District Court of Appeals once again vacated the trial court's judgment and remanded the cause for further proceedings on the grounds that appointed counsel's Rule 604(d) certificate was once again defective.
13. On May 16, 2019, appointed counsel filed a new Rule 604(d) certificate.
14. On June 20, 2019, the trial court denied Petitioner's motion to withdraw his guilty plea.
15. On April 20, 2020, the Fifth District Court of Appeals affirmed the trial court's ruling denying Petitioner's motion to withdraw his guilty plea.
16. On November 18, 2020, the Supreme Court of Illinois denied Petitioner's Petition for Leave to Appeal.
17. The Illinois Supreme Court issued its mandate to the Appellate Court on December 23, 2020.

18. Petitioner did not file a petition for certiorari in the United State's Supreme Court, but the deadline for filing such a petition was on March 23, 2021.

19. Petitioner rights under both the Constitution of the United States of America and the Constitution of the State of Illinois were substantially denied in the following ways.

Petitioner was Denied Due Process when the Court Failed to Properly Admonish Him Regarding Possible Consecutive Sentences

20. Petitioner's Due Process rights under the United States Constitution and the Illinois Constitution were violated when the Court failed to properly admonish him regarding possible consecutive sentences.

21. Petitioner pled guilty, pursuant to a fully negotiated plea agreement, to two counts of aggravated battery with a firearm charged under the former statute 720 ILCS 5/12-4.2(a)(1).

22. The Court accepted the plea agreement and imposed two 10-year sentences to be served consecutive to one another.

23. The Court failed to properly admonish Petitioner of the possibilities of consecutive sentences if he were to be found guilty after a trial.

24. Illinois Supreme Court Rule 402(a)(2) states:

> "The court shall not accept a plea of guilty or a stipulation that the evidence is sufficient to convict without first, by addressing the defendant personally in open court, informing him or her of and determining that he or she understands the following...the minimum and maximum sentence prescribed by law, including, when applicable, the penalty to which the defendant may be subjected because of prior convictions or consecutive sentences..."

25. In this case, after the range of punishment was discussed on the record at the plea hearing the Court stated, "I also could run those sentences together or all at the same time, depending on how the evidence comes in." (Ex. 1)

26. The Court did not state that if it found certain factors present it could sentence Petitioner to consecutive sentences.

27. The Court informed the Petitioner that it could only sentence him concurrently, meaning "together or all at the same time"—neither of which means consecutively.

28. Nowhere else in the record at the plea hearing does the Court make any admonishments regarding potential consecutive sentences.

Petitioner was Denied Due Process when the Court Ordered His Sentences to Run Consecutively and Did Not State in the Record Whether it was of the Opinion that a Consecutive Term was Necessary for the Protection of the Public

29. Petitioner's Due Process rights under the United States Constitution and the Illinois Constitution were violated when he was sentenced to two 10-year consecutive sentences for aggravated battery with a firearm where the Court did not state in the record if it was of the opinion that consecutive sentences were necessary for the protection of the public.

30. Upon Petitioner's plea of guilty the Court sentenced him to consecutive terms of 10 years imprisonment on each count.

31. In order for the Court to order consecutive sentences, it must follow 730 ILCS 5/5-8-4, which permits consecutive sentencing if, "having regard to the nature and circumstances of the offense and the character of the defendant, it is the opinion of the court that consecutive sentences are required to protect the public, the basis for which the court shall set forth in the record."

32. The mandatory language in the statute has been held to be permissive. People v. Hicks, 101 Ill.2d 366, (Ill. 1984).

33. "What is required is that the record show that the sentencing court is of the opinion that a consecutive term is necessary for the protection of the public." People v. Pittman, 93 Ill.2d 169, 178, (Ill. 1982)

34. Here, the court made no mention that it considered any factors or that it was of the opinion that consecutive sentences were necessary to protect the public.

Petitioner was Denied Effective Assistance of Counsel

35. Petitioner was denied the effective assistance of counsel as guaranteed by the United States Constitution and the Illinois Constitution resulting in a substantial likelihood that the outcome of Petitioner's guilty plea and sentencing would have been different were he afforded effective assistance of counsel and, in support thereof, states the following with regard to trial counsel:

    a) While visiting Petitioner at the St. Clair County Jail, trial counsel allowed C. J. Baricevic, the son of the judge presiding over Petitioner's case, to accompany him during a privileged attorney-client meeting when important points of Petitioner's case were discussed.

    b) During the meeting, the three of them discussed the State's evidence, Petitioner's role in the case, and whether or not Petitioner should enter a guilty plea.

    c) Trial counsel did not reveal to Petitioner that Baricevic is the son of the judge who presided over Petitioner's case, nor did he explain why he allowed Baricevic to attend the meeting.

d) Petitioner did not know at that time that Baricevic was the judge's son but assumed that he was a member of his trial counsel's legal team.

e) Trial counsel should have known that including Baricevic as part of the trial counsel team would be a violation of Illinois Supreme Court Rule 63(C)(1)(e)(ii) requiring the judge to disqualify himself from the proceeding.

f) "The purpose of the attorney-client privilege 'is to secure for the client the ability to confide freely and fully in his or her attorney, without fear that confidential information will be disseminated to others.'" *People v. Childs*, 305 Ill.App.3d 128, 238 (Ill. App. 1999) (*quoting People v. Knuckles*, 165 Ill.2d 125, 130 (1995)).

g) Petitioner informed his appointed counsel for his motion to withdraw his guilty plea of the situation with Mr. Baricevic, but he did not include that in Petitioner's motion nor in any argument to the Court.

WHEREFORE, Petitioner prays that the judgment of conviction and sentence be set aside to correct a manifest injustice and for any other relief the Court deems just.

Michael A. Williams
MICHAEL A. WILLIAMS, Petitioner

STATE OF ILLINOIS)
) ss
COUNTY OF Clinton)

I swear that the facts in this Petition are true and ~~current~~ correct in substance and in fact.

Michael A. Williams
MICHAEL A. WILLIAMS, Petitioner

Subscribed and sworn before me this 23 day of September, 2021.

FILED
ST. CLAIR COUNTY
SEP 23 2021
Kimberly A. Clay
CIRCUIT CLERK
24

SONDRA PICKETT
OFFICIAL SEAL
Notary Public - State of Illinois
My Commission Expires Aug 05, 2023

Sondra Pickett
Notary Public

Do you agree, --

MR. KELLY: Yes, sir.

THE COURT: -- Mr. Kelly?

And the aggravated battery is six to thirty?

MR. CHRIST: That's correct.

THE COURT: So, Mr. Williams, if we had proceeded to trial, the range of punishments available to you on Count 1 was thirty-one years to life in prison. If you had been paroled, you would have gotten an additional three years of mandatory supervised release. Probation is not an option. You could be fined twenty-five thousand dollars.

On Counts 3 and 4 each, you could have been sentenced to prison for a determinate period of time between six and thirty years, followed by three years of mandatory supervised release. Again, probation is not an option. You could be fined up to twenty-five thousand dollars.

I also could run those sentences together or all at the same time, depending on how the evidence comes in.

Do you have any questions about the range of sentences that you are facing?

THE DEFENDANT: No, sir.

THE COURT: By pleading guilty, Mr. Williams, you will be giving up some constitutional rights. I'll go over those you with.

Ex. 1

C-319

IN THE CIRCUIT COURT OF THE TWENTIETH JUDICIAL CIRCUIT
ST. CLAIR COUNTY, ILLINOIS

PEOPLE OF THE STATE OF ILLINOIS, Respondent,	)	
vs.	)	Circuit Court No. 09CF0129901
MICHAEL A. WILLIAMS, Defendant.	)	

CERTIFICATE OF COMPLIANCE WITH RULE 651(c)

COMES NOW defense counsel and states that he has complied with Illinois Supreme Court Rule 651(c), and states the following:

1. Petitioner's counsel has consulted with Petitioner by telephone and in person.
2. Petitioner's counsel has examined the trial record to ascertain his contentions of deprivation of constitutional rights.
3. Petitioner did not file a pro se petition.

Respectfully submitted,

Ryan Martin, ARDC # 6307988
Taaffe & Associates, LLC
1015 Locust St.
Suite 1032
St. Louis, MO 63101
ryan@taaffeandassociates.com
(618) 365-0413

CERTIFICATE OF SERVICE

The undersigned certifies that a true and correct copy of the above and foregoing was hand-delivered to the St. Clair County State's Attorney at 10 Public Square, Belleville, IL 62220 on this 23rd day of September 2021.

Ryan Martin

CERTIFICATE OF SERVICE

The undersigned certifies that a true and correct copy of the above and foregoing was hand-delivered to the St. Clair County State's Attorney at 10 Public Square, Belleville, IL 62220 on this 23rd day of September 2021.

Ryan Martin

FILED
ST. CLAIR COUNTY
SEP 23 2021
CIRCUIT CLERK
24

AFFIDAVIT

FILED
ST. CLAIR COUNTY
SEP 23 2021
24 CIRCUIT CLERK

TO WHOM IT MAY CONCERN:

1. I MICHAEL WILLIAMS WAS SENTENCED TO TWO COUNTS OF AGG. BATTERY WITH A FIRE ARM IT SERVED CONSECUTIVE 10 YEARS I DIDNT UNDERSTAND WHAT THE COURT MEANT BY HE COULD SENTENCE ME TOGETHER OR AT THE SAME TIME.

2. MY ATTORNEY CHET ICELLY CAME TO VISIT ME WITH C.J. BARICEVIC WHOM I DISCOVERED WAS THE SON OF MY TRIAL JUDGE AND I COULD NOT CONTINUE TO TRIAL WITH CHET AS MY ATTORNEY.

3. DURING AN INTERVIEW WITH ~~HER~~ MY ATTORNEY WHILE HE AND I DISCUSSED MATTERS OF MY CASE ~~WITH~~ C.J. BARICEVIC WAS IN THE INTERVIEW ROOM.

4. I WAS APPOINTED ATTORNEY BRYAN FLYNN ON MY MOTION TO WITHDRAW GUILTY PLEA I INFORMED HIM OF THE ISSUE WITH CHET KELLY BRINGING C.J. BARICEVIC ON AN INTERVIEW AND I ASKED MR. FLYNN TO INCLUDE THAT ISSUE INTO MY MOTION TO WITHDRAW GUILTY PLEA AND HE DID NOT.

FILED
ST. CLAIR COUNTY
SEP 23 2021
24
CIRCUIT CLERK

STATE OF ILLINOIS)
) SS
COUNTY OF CLINTON)

I SWEAR THAT THE FACTS IN THIS AFFIDAVIT ARE TRUE AND CORRECT

Michael A. Williams

MICHAEL A. WILLIAMS, AFFIANT

SUBSCRIBED AND SWORN BEFORE ME THIS 23 DAY OF September, 2021

SONDRA PICKETT
OFFICIAL SEAL
Notary Public - State of Illinois
My Commission Expires Aug 05, 2023

Sondra Pickett
NOTARY PUBLIC

IN THE CIRCUIT COURT OF THE TWENTEITH JUDICIAL CIRCUIT
ST. CLAIR COUNTY, ILLINOIS

PEOPLE OF THE STATE OF ILLINOIS,

Plaintiff,

vs.

MICHAEL WILLIAMS,

Defendant.

No. 09-CF-1299

PEOPLE'S MOTION TO DISMISS
DEFENDANT'S VERIFIED PETITION FOR POST-CONVICTION RELIEF

NOW COMES James A. Gomric, State's Attorney in and for the County of St. Clair, State of Illinois, by Jason Emmanuel, Assistant States Attorney, and herein moves this Honorable Court to dismiss Defendant's Petition for Post-Conviction Relief, and for reasons states as follows:

I. Procedural History

On December 4, 2009 a St. Clair County Grandy Jury returned a 4 (four) count Criminal Indictment charging Defendant with the offense of Armed Robbery (Counts 1 & 2) and Aggravated Battery with a Firearm (Counts 3 & 4). The Armed Robbery counts charged that during the commission of the offense, the Defendant personally discharged a firearm that caused great bodily harm to the victim. On March 7, 2021, Defendant entered into a fully negotiated plea and sentence wherein he pleaded guilty to Counts 3 & 4 and joined the State in recommending an aggregate sentence of 20 years (10 + 10 consecutive) in the Illinois Department of Corrections to be served at 85% Truth-in-Sentencing, followed by 3 (three) years of mandatory supervised release. In return the State moved to dismiss Counts 1 and 2. The honorable Judge John Baricevic concurred in the negotiations and sentenced Defendant to

exactly what he bargained for during his negotiations with the State. *See* Tr. Rep. of Proceedings Plea of Guilty and Sentencing, Mar. 7, 2011; Penitentiary Mittimus, Mar. 3, 2011. Defendant filed a pro se motion to withdraw guilty plea on March 3, 2011 which Judge Baricevic denied after hearing on the motion. *See* Mot. to Withdraw Guilty Plea, Mar. 22, 2011; Order, Mar. 24, 2011; Tr. Rep. of Proceedings, Mar. 24, 2011. After the Fifth District Appellate Court reversed and remanded the denial of Defendant's motion, counsel Brian Flynn filed a new Motion to Withdraw Guilty Plea which was called for hearing and subsequently denied. *See generally People v. Williams,* 2012 IL App. 5th 110144-U (unpublished decision); Rep. of Proceedings, Sep. 5, 2012; Mot. to Withdraw Guilty Plea, Feb. 20, 2013; Tr. Rep. of Proceedings, Feb. 20, 2013; Order, Feb. 20, 2013. After multiple remands and rehearings, the Circuit Court's Denial of Defendant's motion was affirmed by the Fifth District Appellate Court on Apriol 17, 2020. *See People v. Williams*, 2020 IL App. 5th 190264-U (unpublished decision) (the procedural history leading up to the decision is well documented by the Appellate Court in the decision). The Illinois Supreme Court denied Defendant's Petition for Leave to Appeal on November 18, 2020. *See People v. Williams*, 159 N.E.3d 969 (Ill. 2020) (Table). On September 23, 2021, Defendant filed a Verified Petition for Post-Conviction Relief with an accompanying Rule 651(c) certificate. Pet'r's V. Pet. For Pos-Conviction Relief, Sep. 23, 2021 (hereinafter "Petition"). On October 7,2021, the Court found a gist of a constitutional claim and advanced the petition to Stage 2.

II. Post-Conviction Hearing Act

Defendant seeks post-conviction relief pursuant to *725 ILCS 5/122*. The adjudication of a post-conviction petition is a three-stage process. *See generally People v. English,* 2013 IL 112890, ¶ 23. The first stage obliges the trial court to perform an independent assessment of a

defendant's petition. *People v. Hotwagner*, 2015 IL App (5th) 130525, ¶ 28. If the trial court finds that the petition is "frivolous" or "patently without merit", the court can summarily dismiss the petition. *Id.* To survive first stage review, "a petition need only present the gist of a constitutional claim which is a purposely low threshold for survival. . .." *Id.* (internal quotations omitted). If the petition survives first stage review, it is advanced to the second stage. *Id.*

At the second stage, the People may move to dismiss the Petition for Post-Conviction Relief. *725 ILCS 5/122–5* (Ill. Comp. Stat. Ann. 2012). When the People move for dismissal of a post-conviction petition at the second stage, "the circuit court must determine whether the petition and any accompanying documentation make a substantial showing of a constitutional violation. If no such showing is made, the petition is dismissed." *People v. Edwards*, 757 N.E.2d 442, 446 (2001). Illinois courts have determined that in order to make a substantial showing, a petition "must contain specific factual allegations rather than conclusory statements. The defendant has the burden of supporting the factual allegations in the petition by affidavits, the record, or other evidence containing specific facts." *People v. Stein*, 625 N.E.2d 1151, 1153 (3d Dist. 1993) (internal citations omitted). In the event that a defendant fails to carry their burden of proof, the trial court may dismiss the petition based upon "what is contained in the petition and what is revealed in the record of the trial or other proceedings." *Id.* The substantial showing of a constitutional violation at stage two advances a petition to a third stage evidentiary hearing which, once again, requires that a defendant make a substantial showing of a constitutional violation. *See generally People v. Pendleton*, 861 N.E.2d 999 (2006).

III. Alleged Constitutional Violations

The constitutional violations alleged in both Defendant's Petition are premised upon allegations of due processes violations and ineffective assistance of counsel. When claims of

ineffective assistance of counsel are raised, this Court should apply the *Strickland* test. *See People v. Albanese*, 531 N.E.2d 17 (1988) (citing *Strickland v Washington*, 466 U.S. 669 (1984)). The *Strickland* test is a two-prong test which requires showing both that trial counsel's performance fell below an objective standard of reasonableness and that but for trial counsel's deficient performance, the result of the trial would have been different. *Id.* The appellate court has held that "[b]ecause a defendant must establish both a deficiency in counsel's performance and prejudice resulting from the alleged deficiency, failure to establish either proposition will be fatal to the claim." *Hotwagner*, 2015 IL App (5th) 130525, ¶ 34 (citing *People v. Sanchez*, 662 N.E.2d 1199 (1996)). It is well recognized that "[t]o establish deficiency, the defendant must overcome the strong presumption that the challenged action or inaction might have been the product of sound trial strategy." *People v. Evans*, 708 N.E.2d 1158, 1163 (1999). Where a Petitioner's prayers for relief are predicated on ineffective assistance of plea counsel, as is the case before this Court, the Illinois Supreme Court noted that "there is a reasonable probability that, but for counsel's errors, he would not have pleaded guilty and would have insisted on going to trial . . . . a conclusory allegation that defendant would not have pleaded guilty and would have demanded trial is insufficient to establish prejudice for purposes of an ineffectiveness claim. *People v. Brown*, 2017 IL 121681 at ¶ 26 (internal citations and quotations omitted). The Illinois Supreme Court "has also required a guilty-plea defendant to raise a claim of innocence or state a plausible defense that could have been raised at trial to satisfy the prejudice prong." *Id.* at ¶ 29.

Where the first prong of *Strickland* is not met, no consideration need be given to the second prong. *People v. Marshall*, 873 N.E.2d 978, 989 (1st Dist. 2007). All of Defendants claims that trial was ineffective fail to satisfy either prong of the *Strickland* test.

IV. Defendant's Petition

A. Defendant's Claim that he was denied Due Process in that he was improperly admonished about consecutive sentencing.

Illinois courts have state that "whether reversal is required on the basis that the trial court did not properly admonish [a] defendant pursuant defendant pursuant to Rule 402, [a court] must consider whether (1) the trial court's admonishments substantially complied with Rule 402 and (2) if not, whether the defendant suffered prejudice as a result." *See People v. Pace*, 2015 IL App. (1st) 110415 (2015) at ¶ 58 *appeal denied 75 N.E.3d 1051 (Ill. 2016), affirmed in part, vacated in part (on other grounds), and remanded with instructions* 1027 IL App. (1st) 110415-U (unpublished decision). Here, like the defendant in *Pace*, Defendant is unable to establish that he suffered prejudice as a result of a defective admonition. In this case, Defendant received exactly what he bargained for by way of the plea negotiations. Any defect in the Rule 402 admonishment had absolutely no material effect on the outcome of the plea or sentence. Defendant's pleadings are void of any allegation that he would not have pleaded guilty had he received the proper admonishments, the trial court did not impose a sentence that exceeded the range of penalties he was told he could receive, and he received the exact sentence that was jointly recommended to the Court.

It should be noted that Defendant failed to raise this issue in his motion to withdraw guilty plea and he failed to raise the issue on direct appeal. Accordingly, he should be barred from raising it now. *See* Illinois Supreme Court Rule 604(d); *see also People v. Jones*, 809 N.E.2d 1233, 1236 (2004), *as modified on denial of reh'g* (May 24, 2004) ("Considerations of res judicata and waiver limit the scope of post-conviction relief to constitutional matter which have been and could not have been previously adjudicated.").

B. Defendant's claim that he was denied due process when the Court ordered his sentences to run consecutively and did not state in the record whether it was of the opinion that a consecutive term was necessary for the protection of the public.

As is clear from the record, Defendant was sentenced by the trial court consistent with the negotiations. Defendant cites *730 ILCS 5/5-8-4(c)* in his petition which discusses those circumstances in which consecutive sentences are permissive. Defendant ignores subsection *730 ILCS 5/5-8-4(d)(1)* which obliges a sentencing court to impose consecutive sentences where, in relevant part, an individual is convicted of a Class X or Class 1 felony and the defendant inflicted severe bodily injury. *See 720 ILCS 5/5-8-4 (d)(1)* (West 2009). At the time of plea, the prosecutor was permitted to supplement the factual basis to include that the state would prove that the victim's injuries constituted great bodily harm and defense counsel stipulated that the evidence would be sufficient for such a finding. Accordingly, the mandatory sentencing provision were triggered. Defendant's reliance on *People v. Hicks*, 101 Ill. 2d 366 (Ill. 1984) is misplaced. *Hicks does* not support Defendant's assertions because it is interpreting the 1979 Illinois Revised Statutes section addressing concurrent and consecutive sentences. A comparison of the applicable Illinois Compiled Statute readily reveals that the language is distinguishable and *Hicks* is inapplicable in the case at bar. *See Ill. Rev. Stat. 1979, ch. 38 par. 1005-8-4* (attached as Exhibit 1)

The Defendant failed to raise this issue in his motion to withdraw guilty plea and on direct appeal. Accordingly, he should be barred from raising it now. *See Jones* 809 N.E. 2d 1233.

C. Defendant's Claim that he was denied ineffective assistance of counsel.

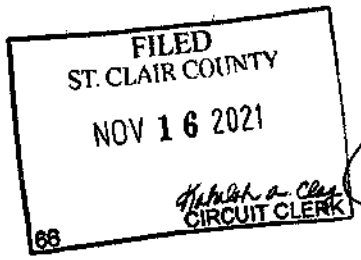
The Court should take judicial notice of the State of Illinois Attorney Registration and Disciple Commission's lawyer search for Charles John (C.J) Baricevic. A search shows that C.J.

Baricevic was not admitted to practice law in the State of Illinois until November 10, 2011. (Attached as Exhibit 2). This is a full 8 months after Defendant entered into his fully negotiated plea and sentence. Assuming arguendo that C.J. Baricevic accompanied trial counsel on a visit to Defendant at the St. Clair County Jail, Defendant fails to articulate how it trial counsel's performance was deficient or how he was prejudiced by C.J.'s attendance. He further fails to articulate that, but for trial counsel's ineffectiveness, he would not have entered into his negotiated plea. Since Defendant is unable to satisfy either prong of Strickland, the Court should dismiss this allegation at second stage. As with the other allegations in his petition, Defendant failed to raise the issue in his motion to withdraw guilty plea or on direct appeal and, therefore, he should be barred from raising it now. *See Jones* 809 N.E. 2d 1233.

V. Conclusion

Defendant's claims for post-conviction relief should be dismissed for reasons stated herein, specifically that he suffered no due process violations and that his ineffective assistance of counsel claim fail to satisfy either prong of the *Strickland* test. Furthermore, in all instances, The remaining claims were waived.

WHEREFORE, the People respectfully request this Court dismiss Defendant's Verified Petition for Post-Conviction Relief and for such other relief as the Court deems just and appropriate.



Respectfully Submitted,

Jason R. Emmanuel (#6318299)
Assistant State's Attorney
10 Public Square
Belleville, IL 62220
Phone (618) 277-3892
Fax (618) 277-6748

Proof of Service

The undersigned certifies that a copy of the People's Motion to Dismiss Defendant's Verified Petition for Post-Conviction Relief was filed with the Court and served, by electronic mail, on the attorney of record in the above cause on this 16th day of November, 2021.

Jason R. Emmanuel
Assistant State's Attorney

FILED
ST. CLAIR COUNTY
NOV 16 2021
CIRCUIT CLERK
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IN THE CIRCUIT COURT
TWENTIETH JUDICIAL CIRCUIT OF ILLINOIS
ST. CLAIR COUNTY, ILLINOIS

THE PEOPLE OF THE STATE OF ILLINOIS,
Plaintiff,
vs. No. 09-CF-1299
MICHAEL A. WILLIAMS,
Defendant.

REPORT OF PROCEEDINGS

Before the HON. JULIE KATZ, Associate Judge

February 18, 2022

APPEARANCES:

MS. AIRIKA DETMER, Assistant State's Attorney;
On Behalf of the People.

MR. RYAN MARTIN, Attorney at Law;
On Behalf of the Defendant.

JEAN E. LORENZ, CSR
Official Court Reporter
C.S.R. License #084-003357

BE IT REMEMBERED AND CERTIFIED that heretofore, on to-wit: February 18, 2022, being one of the regular judicial days of this Court, the matter as hereinbefore set forth came on for hearing before the HON. JULIE KATZ, Associate Judge in and for the Twentieth Judicial Circuit, State of Illinois, and the following was had of record, to-wit:

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THE COURT: We are on the record in Cause No. 09-CF-1299, People of the State of Illinois versus Michael A. Williams.

The People are represented by Ms. Airika Detmer and the defendant is present in open court with his attorney Mr. Ryan Martin. And we are here for argument of the motion to dismiss that was filed by the State with regard to the verified petition for postconviction relief filed on behalf of Mr. Williams on September 23, 2021. The motion to dismiss was filed on November 16, 2021.

All right. So, Ms. Detmer, it is your motion to dismiss so you have the floor.

MS. DETMER: Your Honor, at this time the State would rest or stand on their motion. We have no further arguments.

THE COURT: All right. And, Mr. Martin, the Court

has read the verified petition but you certainly are able to highlight whatever you want, make as much as of a record as you wish to but I have read it and I would have some questions for you most likely.

MR. MARTIN: Thanks, Judge.

I would just point out that on our point number one and point number two, and I know that the State has put in a motion to dismiss that those should be waived because they weren't raised in the motion to withdraw his guilty plea or in the direct appeal, and that is true that they were not raised then. The petitioner here is asking the Court to consider fundamental fairness in allowing him to receive an evidentiary hearing on those two points.

On point number three, I don't believe that the ineffective assistance of counsel claims are waived because they contain matters that are outside the record. They're not apparent in the record themselves, and Mr. Williams has filled out an affidavit stating those claims that are attached to the verified petition.

And that's all I would say, Judge.

THE COURT: So, Mr. Martin, certainly I'm aware of the case law that indicates when there are claims that are outside of the record such as a claim that a defendant is denied effective assistance of trial counsel that the case

law directs this Court to pass it through to a second stage proceeding because something is being raised that is outside of the record, and one of the prime examples of that is a claim that someone was denied effective assistance of counsel but I have not seen any case law that says that he couldn't have made that argument to the Appellate Court. So tell me why he was not able to argue to the Appellate Court that he was denied effective assistance of counsel because what he alleges is the Judge's son going to the jail with his attorney to talk to him about his case?

MR. MARTIN: Yeah, and that's why I think that we need an evidentiary hearing on it, Judge. I don't know from the appellate counsel's filings and stuff whether, you know, they had talked about that but he certainly alleges it now.

I don't know -- I know that, you know, obviously this is all, you know, outside the record stuff so I'm not 100 percent sure on the direct appeal issue, Judge.

THE COURT: So I know what the State argued in its motion to dismiss was with regard to that third claim. You've got to satisfy the two prongs of Strickland and I'm not seeing the nexus between what about the fact that CJ Baricevic if, in fact, he did visit your client at the St. Clair County Jail, what about that that satisfies either of the prongs of Strickland? How -- what did it have to do with

the fact that he ultimately pled guilty?

MR. MARTIN: Well, I would argue in his affidavit, Mr. Williams' affidavit that he says in point number two on it that he says my attorney Chet Kelly came to visit with me with CJ Baricevic and I discovered it was the son of the trial judge and I could not continue to trial with Chet as my attorney. So I would argue that that does satisfy both prongs of Strickland, that he would have went to trial but for this incident.

THE COURT: Even though he was facing the possibility of 33 years you're arguing that he would have gone to trial rather than enter a plea of guilty with the State agreeing to recommend a sentence of 11 years? No, I'm sorry. He was facing 33 years to life, so you're indicating and you have to I think at this stage show more than just oh, I would have. There needs to be a stronger showing that if in fact what defense he would have posed if he had gone to trial and why he would have gone to trial and risk a life sentence rather than a recommended sentence of 11 years and ultimately he got 9 but -- but --

So go ahead, talk to me about that.

MR. MARTIN: What is your question, Judge? I'm sorry.

THE COURT: Ultimately he got 20, he got two

10-year sentences but tell me -- he has to do more than say I would have gone to trial. He has to establish some reasonable defense that he would have posed that would convince me that he would have in fact gone to trial rather than to take a plea of guilty when he was facing the possibility of a life sentence. He was instead given two 10-year consecutive sentences.

So what would -- tell me why I should believe that he would have gone to trial rather than take that plea.

MR. MARTIN: Well, I think he was sitting in there and he found out that Mr. Baricevic was the son of the trial judge and he felt pressured in that situation that, you know, he couldn't continue with Chet Kelly in that having this situation had occurred. So I mean I think that that there tells the Court that he would have went to trial but for this incident.

THE COURT: All right. It's your motion, Ms. Detmer, do you have anything to say in response to that?

MS. DETMER: Your Honor, I still think we're not -- the prejudice prong of the Strickland test hasn't been satisfied at this point in time. It almost seems as if he got a better deal than had he gone to trial and been facing a higher sentence than he did.

Further, Your Honor, I believe it was a negotiated

plea so there's been no indication that Mr. Baricevic pressured him to take this whenever he had negotiated for. I believe that's in my motion so --

THE COURT: It is. And actually I don't think Mr. Baricevic as in CJ Baricevic had anything do with the case other than allegedly meeting with him at the jail. Ultimately Chet Kelly was the one who appeared with him in court is my understanding; correct, Mr. Martin?

MR. MARTIN: That's correct, Judge.

THE COURT: All right. Anything further, either one of you?

MS. DETMER: Nothing from the State, Your Honor.

THE COURT: Mr. Martin.

MR. MARTIN: No, Your Honor.

THE COURT: All right. I will give this some thought and I will issue an order I would think within a week. All right?

MS. DETMER: Thank you, Your Honor.

THE COURT: All right. Thank you both.

(End of Proceedings.)

TWENTIETH JUDICIAL CIRCUIT)
)
COUNTY OF ST. CLAIR) SS
)
STATE OF ILLINOIS)

I, Jean E. Lorenz, hereby certify that the foregoing transcript is a true and accurate report of the proceedings had in the above-styled cause.

Dated this 11th day of April, 2022.

JEAN E. LORENZ
Official Court Reporter
CSR License #084-003357

This form is approved by the Illinois Supreme Court and is required to be accepted in all Illinois Appellate Courts.

Instructions

Check the box to the right if your case involves parental responsibility or parenting time (custody/visitation rights) or relocation of a child.

Just below "Appeal to the Appellate Court of Illinois," enter the number of the appellate district that will hear the appeal and the county of the trial court.

If the case name in the trial court began with "In re" (for example, "In re Marriage of Jones"), enter that name. Below that, enter the names of the parties in the trial court, and check the correct boxes to show which party is filing the appeal ("appellant") and which party is responding to the appeal ("appellee").

To the far right, enter the trial court case number, the trial judge's name, and the Supreme Court Rule that allows the appellate court to hear the appeal.

☐ **THIS APPEAL INVOLVES A MATTER SUBJECT TO EXPEDITED DISPOSITION UNDER RULE 311(a).**

APPEAL TO THE APPELLATE COURT OF ILLINOIS

FIFTH ☑ **District**

from the Circuit Court of

St. Clair ☑ **County**

In re

Michael A. Williams

Plaintiffs/Petitioners *(First, middle, last names)*

☑ **Appellants** ☐ **Appellees**

v.

People of the State of Illinois

Defendants/Respondents *(First, middle, last names)*

☐ **Appellants** ☑ **Appellees**

Trial Court Case No.:
09-CF-1299

Honorable
Julie Katz
Judge, Presiding

Supreme Court Rule:
651

FILED
ST. CLAIR COUNTY
MAR 22 2022
20 CIRCUIT CLERK

NOTICE OF APPEAL

In 1, check the type of appeal.
For more information on choosing a type of appeal, see *How to File a Notice of Appeal.*

1. Type of Appeal:

- ☑ Appeal
- ☐ Interlocutory Appeal
- ☐ Joining Prior Appeal
- ☐ Separate Appeal
- ☐ Cross Appeal

In 2, list the name of each person filing the appeal and check the proper box for each person.

2. Name of Each Person Appealing:

Name: Michael (*First*) A. (*Middle*) Williams (*Last*)

☑ Plaintiff-Appellant ☐ Petitioner-Appellant

OR

☐ Defendant-Appellant ☐ Respondent-Appellant

Name: _____
First *Middle* *Last*

☐ Plaintiff-Appellant ☐ Petitioner-Appellant

OR

☐ Defendant-Appellant ☐ Respondent-Appellant

In 3, identify every order or judgment you want to appeal by listing the date the trial court entered it.

3. List the date of every order or judgment you want to appeal:

02/22/2022
Date

_____
Date

_____
Date

In 4, state what you want the appellate court to do. You may check as many boxes as apply.

4. State your relief:

☑ reverse the trial court's judgment *(change the judgment in favor of the other party into a judgment in your favor)* and ☑ send the case back to the trial court for any hearings that are still required;

☐ vacate the trial court's judgment *(erase the judgment in favor of the other party)* and ☐ send the case back to the trial court for a new hearing and a new judgment;

☐ change the trial court's judgment to say: _____

☐ order the trial court to: _____

☐ other: _____

and grant any other relief that the court finds appropriate.

If you are completing this form on a computer, sign your name by typing it. If you are completing it by hand, sign by hand and print your name. Fill in your address, telephone number, and email address, if you have one.

/s/Michael Williams
Your Signature

Michael Williams, #R-02784
Your Name

_____
Email

Centralia Correctional Center, P.O. Box 7711
Street Address

centralia, IL 62801
City, State, ZIP

_____
Telephone

6307988
Attorney # (if any)

All appellants must sign this form. Have each additional appellant sign the form here and enter their complete name, address, telephone number, and email address, if they have one.

Additional Appellant Signature

/s/
Signature

_____
Name

_____
Email

_____
Street Address

_____
City, State, ZIP

_____
Telephone

_____
Attorney # (if any)

GETTING COURT DOCUMENTS BY EMAIL: You should use an email account that you do not share with anyone else and that you check every day. If you do not check your email every day, you may miss important information, notice of court dates, or documents from other parties.

PROOF OF SERVICE ***(You must serve the other party and complete this section)***

In **1a**, enter the name, mailing address, and email address of the party or lawyer to whom you sent the document.

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CAUTION: If you and the person you are sending the document to have an email address, you **must** use one of the first two options. Otherwise, you may use one of the other options.

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1. I sent this document:
   a. To:
      Name: St. Clair County State's Attorney
      First *Middle* *Last*
      Address: 1 Public Square Belleville IL 62220
      Street, Apt # *City* *State* *ZIP*
      Email address: _____
   b. By:
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      Only use one of the methods below if you do not have an email address, or the person you are sending the document to does not have an email address.
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   c. On: 03/22/22
      Date
      At: 11:20 ☒ a.m. ☐ p.m.
      Time
2. I sent this document:
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      Email address: _____
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      ☐ The party
      ☐ The party's family member who is 13 or older, at the party's residence
      ☐ The party's lawyer
      ☐ The party's lawyer's office
      ☐ Mail or third-party carrier
   c. On: _____
      Date
      At: _____ ☐ a.m. ☐ p.m.
      Time

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a. To:

Name: _____
First *Middle* *Last*

Address: _____
Street, Apt # *City* *State* *ZIP*

Email address: _____

b. By:

☐ An approved electronic filing service provider (EFSP)

☐ Email *(not through an EFSP)*

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- ☐ The party's family member who is 13 or older, at the party's residence
- ☐ The party's lawyer
- ☐ The party's lawyer's office

☐ Mail or third-party carrier

c. On: _____
Date

At: _____ ☐ a.m. ☐ p.m.
Time

Under the Code of Civil Procedure, 735 ILCS 5/1-109, making a statement on this form that you know to be false is perjury, a Class 3 Felony.

I certify that everything in the Proof of Service is true and correct. I understand that making a false statement on this form is perjury and has penalties provided by law under 735 ILCS 5/1-109.

If you are completing this form on a computer, sign your name by typing it. If you are completing it by hand, sign by hand and print your name.

/s/ Michael Williams
Your Signature

Michael Williams
Print Your Name

6307988
Attorney # (if any)

APPEAL TO THE APPELLATE COURT OF ILLINOIS
5th JUDICIAL DISTRICT
FROM THE CIRCUIT COURT OF THE 20th JUDICIAL CIRCUIT
ST. CLAIR COUNTY, ILLINOIS

5-22-0185

E-FILED
Transaction ID: 5-22-0185
File Date: 5/25/2022 8:47 AM
John J. Flood, Clerk of the Court
APPELLATE COURT 5TH DISTRICT

STATE OF ILLINOIS

Plaintiff/Petitioner

V.

Appellate Court No: 5-22-0185
Circuit Court/Agency No: 09-CF-1299
Trial Judge/Hearing Officer: HON. JULIE K. KATZ

WILLIAMS, MICHAEL A.

Defendant/Respondent

CERTIFICATION OF RECORD

The record has been prepared and certified in the form required for transmission to the reviewing court. It consisits of:

1 Volume(s) of the Common Law Record containing 414 pages

1 Volume(s) of the Report of Proceedings containing 326 pages

1 Volume(s) of the Exhibits containing 3 pages

I hereby certify this record pursuant to Supreme Court Rule 324,
this 24Th DAY OF MAY, 2022

(Clerk of the Circuit Court or Administrative Agency)

Marie Zaiz

(Circuit Clerk)

E-FILED
9/28/2023 2:40 PM
CYNTHIA A. GRANT
SUPREME COURT CLERK

APPEAL TO THE APPELLATE COURT OF ILLINOIS
5th JUDICIAL DISTRICT
FROM THE CIRCUIT COURT OF THE 20th JUDICIAL CIRCUIT
ST. CLAIR COUNTY, ILLINOIS

STATE OF ILLINOIS

Plaintiff/Petitioner

Appellate Count No: **5-22-0185**
Circuit Court/Agency No: **09-CF-1299**
Trial Judge/Hearing Officer: **HON. JULIE K. KATZ**

V.

WILLIAMS, MICHAEL A.

Defendant/Respondent

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5th JUDICIAL DISTRICT
FROM THE CIRCUIT COURT OF THE 20th JUDICIAL CIRCUIT
ST. CLAIR COUNTY, ILLINOIS

STATE OF ILLINOIS

Plaintiff/Petitioner

Appellate Court No: **5-22-0185**
Circuit Court/Agency No: **09-CF-1299**
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V.

WILLIAMS, MICHAEL A.

Defendant/Respondent

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ST. CLAIR COUNTY, ILLINOIS

STATE OF ILLINOIS

Plaintiff/Petitioner

Appellate Count No: **5-22-0185**
Circuit Court/Agency No: **09-CF-1299**
Trial Judge/Hearing Officer: **HON. JULIE K. KATZ**

V.

WILLIAMS, MICHAEL A.

Defendant/Respondent

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STATE OF ILLINOIS

Plaintiff/Petitioner

Appellate Count No: **5-22-0185**

Circuit Court/Agency No: **09-CF-1299**

V.

Trial Judge/Hearing Officer: **HON. JULIE K. KATZ**

WILLIAMS, MICHAEL A.

Defendant/Respondent

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ST. CLAIR COUNTY, ILLINOIS

STATE OF ILLINOIS

Plaintiff/Petitioner

Appellate Count No: **5-22-0185**

Circuit Court/Agency No: **09-CF-1299**

V.

Trial Judge/Hearing Officer: **HON. JULIE K. KATZ**

WILLIAMS, MICHAEL A.

Defendant/Respondent

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Reports of Proceedings: Hearings

PROOF OF SERVICE

Under penalties as provided by law pursuant to 735 ILCS 5/1-109, the undersigned certifies that the statements set forth in this instrument are true and correct. On February 14, 2024, the **Brief and Appendix of Respondent-Appellant People of the State of Illinois** was filed with the Clerk of the Supreme Court of Illinois, using the court's electronic filing system, which provided notice to the following registered email addresses:

Ellen J. Curry
Office of the State Appellate Defender
Fifth Judicial District
5thdistrict.eserve@osad.state.il.us

Counsel for Defendant-Appellee

Additionally, upon its acceptance by the Court's electronic filing system, the undersigned will mail thirteen copies of the Brief to the Clerk of the Supreme Court of Illinois, Supreme Court Building, 200 East Capitol Avenue, Springfield, Illinois 62701.

s/Mitchell J. Ness
MITCHELL J. NESS
Assistant Attorney General