2026 IL App (1st) 250832-U
No. 1-25-0832
Order filed November 12, 2026

NOTICE: This order was filed under Illinois Supreme Court Rule 23 and is not precedential except in the limited circumstances allowed under Rule 23(e)(1).

IN THE

APPELLATE COURT OF ILLINOIS

FIRST DISTRICT

THIRD DIVISION

THE PEOPLE OF THE STATE OF ILLINOIS, Plaintiff-Appellee,

v.

DONTAE BOYKIN, Defendant-Appellant.

Appeal from the Circuit Court of Cook County.
Honorable Charles P. Burns, Judge Presiding.
No. 14 CR 3714

PRESIDING JUSTICE QUISH delivered the judgment of the court.
Justices Lampkin and Rochford concurred in the judgment.

ORDER

¶ 1 *Held*: Defendant failed to demonstrate that postconviction counsel rendered unreasonable assistance by not amending defendant's *pro se* petition when defendant's due process claims were waived by his entry of a negotiated guilty plea and defendant did not specify how counsel should have amended his petition.

¶ 2 Defendant Dontae Boykin appeals the circuit court's second-stage dismissal of his petition for postconviction relief filed under the Post-Conviction Hearing Act ("Act") (725 ILCS 5/122-1 *et seq.* (West 2020)). He contends that his postconviction counsel rendered unreasonable assistance by failing to make necessary amendments to his *pro se* petition. For the following reasons, we affirm the court's judgment.

¶ 3 In 2014, defendant was indicted on one count each of predatory criminal sexual assault of a child, criminal sexual assault, aggravated kidnapping, and aggravated criminal sexual abuse. He filed a motion to quash arrest and suppress his statement, which proceeded to an evidentiary hearing that took place over several court dates with many witnesses, but the court did not rule on the motion because defendant decided to plead guilty. In June 2016, pursuant to a negotiated agreement with the State, defendant pled guilty to one count of criminal sexual assault in exchange for a sentence of six years' imprisonment and three years to life of mandatory supervised release.

¶ 4 If the case had proceeded to trial, the State would have presented evidence that between October 1 and October 5, 2013, the 13-year-old victim observed defendant, whom she knew, driving down the street. She would identify defendant in open court. She would testify that defendant forced her into the vehicle and "forced his penis into her vagina against her will." Defendant stipulated to those facts.

¶ 5 The court made findings on the record that defendant understood the nature of the charges against him and possible sentences, the plea was freely, voluntarily, and intelligently entered into, and there was a factual basis for the plea. The court then accepted the plea and notified defendant he had 30 days in which to file a motion to vacate his plea. He did not file a motion to withdraw his plea or an appeal.

¶ 6 In May 2020, defendant filed a *pro se* petition for postconviction relief. In the petition and two attached affidavits, defendant listed several statements concerning potential due process issues related to his arrest, interrogation by police, and resulting inculpatory statement. Defendant also averred in that first affidavit: "I was told to take a plea deal of 6 years at 85%, and if I didn't and tried to go to trial, I would be found guilty because of the statement I signed and get up to 30 years." He did not include any other allegations regarding the plea. Defendant's second affidavit

set forth his account of his interactions with the victim, but did not address the specific conduct that led to the charges against him.

¶ 7 The circuit court dismissed the petition at the first stage, finding that it was frivolous and patently without merit. On appeal, pursuant to an agreed motion for summary disposition, this court reversed and ordered that the petition be advanced to the second stage because the circuit court had not ruled on it within 90 days of it being filed. See *People v. Boykin*, 1-22-0379 (May 17, 2023).

¶ 8 Counsel was appointed for defendant in October 2023. In July 2024, counsel filed a certificate pursuant to Illinois Supreme Court Rule 651(c) (eff. July 1, 2017), stating, *inter alia*, that he had reviewed defendant's *pro se* petition and all relevant records and was filing a supplemental petition. The supplemental petition augmented the previously-filed *pro se* petition, and added a claim that defendant was denied due process when he was arrested solely pursuant to an investigative alert.

¶ 9 The State moved to dismiss the petition and supplement. The State first noted that, in light of a recent Illinois Supreme Court decision holding that arrests pursuant to investigative alerts do not violate the Illinois Constitution (see *People v. Clark*, 2024 IL 127838, ¶ 63), counsel for defendant had advised the State that defendant would withdraw that claim. The State further argued that defendant's due process claims were conclusory and unsupported by his affidavits, which only contained allegations related to defendant's charges; were immaterial and inconsequential when considering the evidence of guilt; and were not structural and therefore, not cognizable when defendant did not move to withdraw or appeal his plea. The State further asserted that defendant's due process claims were barred by the doctrines of *res judicata* and waiver because he did not raise them on direct appeal.

¶ 10 Defendant's counsel filed a new Rule 651(c) certificate in February 2025, stating that he would not be making any amendments to defendant's *pro se* petition because "[n]one are necessary for an adequate presentation of [defendant's] contentions." At a hearing on the State's motion to dismiss, counsel confirmed that he was withdrawing his supplemental petition and adopting and resting on defendant's *pro se* petition. When asked by the court whether he wished to address the State's *res judicata* argument, counsel declined and rested on the petition.

¶ 11 The court granted the State's motion to dismiss, finding that defendant waived his constitutional challenges because they could have been raised on direct appeal. The court also found waiver because defendant entered a fully negotiated guilty plea and did not allege either that his plea was not knowing or involuntary or that he had not received the benefit of his bargain. The court further found that, waiver notwithstanding, defendant's claims were "entirely conclusory" and "fail[ed] to allege sufficient facts necessary to demonstrate a substantial showing of a constitutional violation." This timely appeal follows.

¶ 12 On appeal, defendant focuses solely on the performance of postconviction counsel. In postconviction proceedings, unlike at trial, a defendant does not have a constitutional right to the assistance of counsel. *People v. Addison*, 2023 IL 127119, ¶ 19. Instead, the right to counsel is granted by the Act, and that right only entitles a defendant to a "reasonable" level of assistance. *Id.* (citing *People v. Flores*, 153 Ill. 2d 264, 276 (1992)). This is a lesser level of assistance than that afforded by the federal and state constitutions. *Id.* (citing *People v. Pendleton*, 223 Ill. 2d 458, 472 (2006)). To ensure that a defendant receives that level of assistance, Rule 651(c) requires postconviction counsel to file a certificate affirming that counsel has consulted with the defendant to ascertain the nature of his or her claims, has examined the record of the trial proceedings, and "'has made any amendments to the petitions filed *pro se* that are necessary for an adequate

presentation of petitioner's contentions.'" *Id.* ¶ 20 (quoting Ill. S. Ct. R. 651(c)). Substantial compliance with the requirements of Rule 651(c) is sufficient. See *People v. Wright*, 149 Ill. 2d 36, 67 (1992).

¶ 13 "[O]nce postconviction counsel files a Rule 651(c) certificate, a rebuttable presumption of reasonable assistance arises." *Addison*, 2023 IL 127119, ¶ 21 (citing *People v. Custer*, 2019 IL 123339, ¶ 32). "The defendant bears the burden of overcoming that presumption by showing that postconviction counsel did not substantially comply with the strictures of the rule." *Id.* (citing *People v. Gallano*, 2019 IL App (1st) 160570, ¶ 26). "The defendant may do so by, *inter alia*, demonstrating that postconviction counsel did not make all necessary amendments to the *pro se* petition," including amendments necessary to overcome procedural bars. *Id.* The issue of whether postconviction counsel provided reasonable assistance is reviewed *de novo*. *People v. Nesbitt*, 2023 IL App (1st) 211301, ¶ 40. Also, "a reviewing court may affirm a trial court's dismissal at the second stage on any grounds substantiated by the record, regardless of the trial court's reasoning." *People v. Snow*, 2012 IL App (4th) 110415, ¶ 17.

¶ 14 Postconviction counsel in this case filed a Rule 651(c) certificate, and defendant does not argue that the certificate was deficient in any way. Accordingly, we operate from the presumption that counsel rendered reasonable assistance. Defendant argues that the presumption is rebutted by counsel's failure to (1) correct both the State and the circuit court that the failure to file a direct appeal does not result in waiver of the claims in his postconviction petition, (2) shape his claim of "erroneous plea advice" into a claim of ineffective assistance of counsel, and (3) add evidentiary or legal support to his petition.

¶ 15 The State responds, in part, that defendant waived his claims by not moving to withdraw his plea under Illinois Supreme Court Rule 604(d) (eff. Apr. 15, 2024). The State also argues the

claims are waived because defendant entered into a negotiated guilty plea and any amendments made by postconviction counsel would have been futile. The State further argues that, forfeiture notwithstanding, defendant fails to demonstrate unreasonable assistance because he has not specified what amendments counsel should have made.

¶ 16 First, we agree with defendant that the circuit court's finding that defendant waived his postconviction claims by failing to raise them on direct appeal was incorrect. Indeed, while "any issues which could have been raised on direct appeal, but were not, are procedurally defaulted" (*People v. Whitfield*, 217 Ill. 2d 177, 183 (2005)), when a defendant never files an appeal, no such waiver occurs (*People v. Brooks*, 371 Ill. App. 3d 482, 486 (2007); see also *People v. Miranda*, 329 Ill. App. 3d 837, 842-43 (2002)). Further, despite the State's assertion to the contrary, the failure to file a motion to withdraw a guilty plea under Rule 604(d) does not prevent a defendant from filing a postconviction petition. See *People v. Flowers*, 208 Ill. 2d 291, 302 (2003) ("The requirements of Rule 604(d) are inapplicable to postconviction proceedings").

¶ 17 However, as the trial court correctly held, defendant waived his due process claims regarding his arrest, interrogation, and statement by entering into a negotiated guilty plea. Due to that waiver, those claims were patently nonmeritorious and postconviction counsel was not obligated to amend them. See *People v. Greer*, 212 Ill. 2d 192, 205 (2004) (noting that postconviction counsel is not required to amend a *pro se* petition if doing so would only further a patently nonmeritorious claim). "By entering a plea agreement, a defendant 'forecloses any claim of error. It is well established that a voluntary guilty plea waives all non-jurisdictional errors or irregularities, *including constitutional ones.*'" (Emphasis in original, quotation marks omitted.) *People v. Jones*, 2021 IL 126432, ¶ 20 (quoting *People v. Sophanavong*, 2020 IL 124337, ¶ 33). Accordingly, by entering a negotiated guilty plea, defendant waived his due process claims, which

are constitutional in nature. See *id.*; *People v. Anderson*, 375 Ill. App. 3d 121, 133 (2007) (finding that the defendant's voluntary guilty plea waived his postconviction due process claim); *People v. Johnson*, 2021 IL App (1st) 152310, ¶ 21. Although defendant argues on appeal that his postconviction counsel should have "shape[d] his due process claims into proper form," he fails to address his waiver of those claims or explain how or what amendments postconviction counsel could have made to avoid that waiver.

¶ 18 Further, while a defendant who entered into a negotiated guilty plea may still raise a claim that the guilty plea was not knowing or voluntary due to the misadvice of counsel (see *People v. Miller*, 346 Ill. App. 3d 972, 980 (2004)), defendant cannot benefit from that exception in this case because he does not specify what amendment he believes postconviction counsel should have made (see *People v. Profit*, 2012 IL App (1st) 101307, ¶ 29). Although defendant repeatedly argues in this appeal that he had a claim for "erroneous plea counsel advice" and that he alleged in his *pro se* petition that "he was given erroneous advice" or "improper advice by plea counsel," that argument mischaracterizes his actual petition. Rather, defendant merely stated: "I was told to take a plea deal of 6 years at 85%, and if I didn't and tried to go to trial, I would be found guilty because of the statement I signed and get up to 30 years." Defendant did not identify who made that statement, let alone allege that it came from his counsel. Defendant also did not allege that his plea was involuntary, the advice was inaccurate, misleading, or unreasonable, or that he wished to go to trial.

¶ 19 Even with the assistance of appellate counsel, defendant has not provided any additional details or explanation of how postconviction counsel should have molded this statement into a cognizable claim of ineffective assistance of trial counsel. Instead, defendant simply asserts in a conclusory manner that postconviction counsel should have provided the specificity and legal

support that was lacking in the *pro se* petition. But "[i]t is presumed from the lack of an amendment that there were none to be made" (*People v. Huff*, 2024 IL 128492, ¶ 24), and this court has repeatedly held that a defendant fails to demonstrate unreasonable assistance of postconviction counsel when he does not identify with specificity how counsel should have amended the *pro se* petition to allow the petition to survive dismissal (see, *e.g.*, *Profit*, 2012 IL App (1st) 101307, ¶ 29 (holding that, when the "defendant has not identified what arguments in particular counsel could have made," "we will not find that postconviction counsel provided unreasonable assistance in failing to make unspecified arguments"); *People v. Lawson*, 2026 IL App (1st) 241694-U, ¶ 38; *People v. Torres*, 2025 IL App (1st) 240332-U, ¶ 22; *People v. Bernabe*, 2022 IL App (1st) 182475-U, ¶ 23). Without such specificity, defendant has failed to rebut the presumption of reasonable assistance. See *Huff*, 2024 IL 128492, ¶ 24; see also *Torres*, 2025 IL App (1st) 240332-U, ¶¶ 21-22 (finding that the defendant did not demonstrate unreasonable assistance of postconviction counsel when he did not identify any facts supporting his claim and, even with the assistance of appellate counsel, did not suggest how postconviction counsel could have amended his petition to survive the State's motion to dismiss).

¶ 20 For the foregoing reasons, we affirm the second-stage dismissal of defendant's petition for postconviction relief.

¶ 21 Affirmed.