No. 128492

IN THE

SUPREME COURT OF ILLINOIS

PEOPLE OF THE STATE OF ILLINOIS, Respondent-Appellee, -vs- RICHARD HUFF, Petitioner-Appellant.	)))))))))))	Appeal from the Appellate Court of Illinois, No. 1-20-1278. There on appeal from the Circuit Court of Cook County, Illinois, No. 97 CR 26081. Honorable Carol M. Howard, Judge Presiding.

BRIEF AND ARGUMENT FOR PETITIONER-APPELLANT

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NATURE OF THE CASE

Richard Huff was convicted of first degree murder, and sentenced to life in prison. In 2016, he filed a *pro se* petition for postconviction relief. That petition advanced to second-stage proceedings and counsel was appointed to assist him. Appointed counsel filed a certificate of compliance with Illinois Supreme Court Rule 651(c), but did not amend Huff's petition, or move to withdraw as counsel. The State filed a motion to dismiss, which was granted, and the circuit court dismissed Huff's petition. The appellate court affirmed that dismissal in an unpublished decision. See *People v. Huff*, 2022 IL App (1st) 201278-U. On September 28, 2022, this Court granted Huff's petition for leave to appeal. The sufficiency of the pleadings is at issue on appeal.

ISSUE PRESENTED FOR REVIEW

Whether new second-stage proceedings are required because postconviction counsel acted unreasonably by failing to either amend Huff's *pro se* petition to state a non-frivolous claim, or move to withdraw, as required by due process, and counsel's ethical obligations under the applicable rules of professional conduct.

STATEMENT OF FACTS

In 2000, Richard Huff was found guilty of first degree murder. (C.I. 188). At sentencing, the trial court found Huff eligible for the death penalty, but declined to impose it because Huff had no prior convictions. (R. 114, 819, 826-27, 848-49). Instead, it sentenced Huff to a lifetime in prison without the possibility of parole. (R. 850-51).

Huff challenged that sentence on direct appeal, and, separately, in a § 2-1401 petition for relief from judgment. (C.I. 183; Sup. C. 5); 735 ILCS 5/2-1401 (2005). During those proceedings, Huff argued that his sentence violated *Apprendi v. New Jersey*, 530 U.S. 466 (2000), because it was based on a finding made by the trial court, and not the jury. (C.I. 183; Sup. C. 5). Specifically, that the murder was the result of exceptionally brutal or heinous behavior, indicative of wanton cruelty. (C.I. 183; Sup. C. 5). In both proceedings, the appellate court affirmed Huff's sentence, reasoning that when the trial court finds the defendant eligible for the death penalty, it may impose a natural-life sentence without implicating *Apprendi*. See *People v. Huff*, No. 1-00-2414 (unpublished order, Sept. 28, 2001) (C.I. 183-87); *People v. Huff*, No. 1-05-1769 (unpublished order, Nov. 9, 2006) (Sup. C. 4-10).

On July 19, 2016, Huff filed a *pro se* petition for postconviction relief, asserting for a third time that his natural-life sentence, based on the trial court's judicial finding was unconstitutional. (C. 40-52). Huff did not contest the sufficiency of the evidence, and recognized that he had raised this issue twice before. (C. 41, 45). Nevertheless, he argued that the law had changed in the intervening years, and thus his *Apprendi* claim was now viable. (C. 45-

48). As for timeliness, Huff argued that because his conviction was void, it could be challenged at any time. (C. 41, 48).

The circuit court did not dismiss Huff's petition within 90 days. (R. 7). On February 15, 2017, the petition advanced to second-stage proceedings, and counsel was appointed to assist Huff in presenting his claim. (R. 7); 725 ILCS 5/122-4.

On June 13, 2018, postconviction counsel filed a certificate of compliance with Illinois Supreme Court Rule 651(c), stating, among other things, that she would not supplement the *pro se* petition because it "adequately" set forth Huff's claim:

> I have not prepared a Supplemental Petition for Post-Conviction Relief as the Petitioner's previously-filed *pro se* petition for post-conviction relief adequately sets forth the petitioner's claim. . .

(C. 73).

On December 12, 2019, the State filed a motion to dismiss Huff's petition for three reasons. (C. 85-104). First, because it was filed beyond the statute of limitations. (C. 95-97). The deadline to file a petition for postconviction relief was May 2, 2002, and, according to the State, Huff's petition did not adequately explain why his petition was untimely. (C. 96; citing 725 ILCS 5/122-1(c)). Additionally, the State argued that Huff could not rely on the "void sentence rule" because it was abolished in *People v. Castleberry*, 2015 IL 116916; (C. 96-97). Second, the State contended that Huff's claim was barred by *res judicata* because it had been rejected by the appellate court on two separate occasions: once on direct appeal, and once on appeal from the dismissal of his § 2-1401 petition for relief from judgment. (C. 98-99). Third, the State asserted that, assuming, *arguendo*, an *Apprendi*

error occurred, that error was harmless because no reasonable jury could have come to the conclusion that Huff's conduct was not brutal or heinous, indicative of wanton cruelty. (C. 100-04); 720 ILCS 5/9-1(b)(7) (1997).

After the State filed its motion to dismiss, the matter was continued on several occasions to provide postconviction counsel with additional time to file a response. (R. 82-96). On October 27, 2020, postconviction counsel informed the circuit court that she would "rest" on her 651(c) certificate. (R. 98-99).

On November 2, 2020, the State and postconviction counsel appeared for oral argument. (R. 101). Postconviction counsel waived Huff's appearance, and reiterated that she would not amend his *pro se* petition, or respond to the State's motion to dismiss:

> Counsel: Judge, with respect to the defense, I am resting on my 651(c). I am not making an argument. He has filed a *pro se* petition. It speaks for itself. But I am not making any additional argument.
>
> Court: Okay. And are you waiving his appearance for today?
>
> Counsel: Yes, Judge.
>
> Court: [State], you may argue.
>
> * * * State's argument * * *
>
> Court: Thank you. [Postconviction counsel], would you like to respond?
>
> Counsel: No, Judge. I rest on the defendant's petition.

(R. 102-04).

At the conclusion of the hearing, the circuit court granted the State's motion to dismiss Huff's petition on grounds that his claim was barred by *res judicata*. (R. 104; C. 115). Huff filed a timely notice of appeal. (C. 112).

On appeal, Huff argued that his *pro se* petition was deficient on its face and therefore postconviction counsel was unreasonable for failing to either: (a) amend the petition to state a non-frivolous claim, or (b) withdraw as counsel pursuant to *People v. Greer*, 212 Ill. 2d 192, 206 (2004), *People v. Kuehner*, 2015 IL 117695, ¶ 21, and *People v. Shortridge*, 2012 IL App (4th) 100663, ¶ 13. See *People v. Huff*, 2022 IL App (1st) 201278-U, ¶¶ 21, 32.

The appellate court rejected Huff's arguments. *Huff*, 2022 IL App (1st) 201278-U, ¶ 32-42. It held that postconviction counsel had the choice of *either* filing a motion to withdraw *or* "resting" on the allegations in the *pro se* petition if, in postconviction counsel's opinion, the petition could not be amended to state a non-frivolous claim. *Huff*, 2022 IL App (1st) 201278-U, ¶ 33, citing *People v. Dixon*, 2018 IL App (3d) 150630, *People v. Malone*, 2017 IL App (3d) 140165, *People v. Pace*, 386 Ill. App. 3d 1056, (4th Dist. 2008), and *People v. Bass*, 2018 IL App (1st) 152650. Huff did not file a petition for rehearing.

On September 28, 2022, this Court granted Huff's petition for leave to appeal.

ARGUMENT

This Court should find that postconviction counsel acts unreasonably and denies the defendant due process when postconviction counsel fails to either amend a *pro se* petition that is frivolous as written, or file a motion to withdraw.

This Court has long recognized that postconviction counsel has a duty to provide defendants with a "reasonable level of assistance" during postconviction proceedings. *People v. Owens*, 139 Ill. 2d 351, 359, 364 (1990). This standard includes an affirmative duty to ensure the defendant's claims are "adequately presented." *People v. Ashley*, 34 Ill. 2d 402, 412 (1966); *People v. Slaughter*, 39 Ill. 2d 278, 285 (1968); see also Ill. S. Ct. R. 651(c). However, counsel's obligation to "adequately present" the defendant's claims does not exist in a vacuum. As this Court recognized in *People v. Greer*, 212 Ill. 2d 192 (2004), counsel's ethical obligations, including counsel's duty to refrain from raising, presenting, or defending frivolous claims, require postconviction counsel to file a motion to withdraw if, in counsel's opinion, the *pro se* petition is frivolous as written, and cannot be amended to state a non-frivolous claim. See *id.* at 205-06 ("How can counsel, ethically, present the petitioner's contentions when counsel knows those contentions are frivolous? Obviously, the answer is counsel cannot.") (citing Ill. S. Ct. R. 137); see also Ill. R. Prof. Conduct, R. 3.1 (prohibiting counsel from raising "frivolous" claims); Ill. R. Prof. Conduct, R. 3.3 (prohibiting counsel from misleading the court); Ill. R. Prof. Conduct, R. 1.16 (requiring counsel to withdraw when continued representation "will result in violation of the Rules of Professional Conduct or other law").

In this case, Richard Huff filed a *pro se* petition for postconviction

relief that was frivolous as written, and required dismissal during second-stage proceedings absent an amendment to state a non-frivolous claim. (C. 85-104). But instead of amending the *pro se* petition, or withdrawing pursuant to *Greer*, 212 Ill. 2d 192, postconviction counsel filed a 651(c) certificate asserting that the *pro se* petition "adequately" presented Huff's claims of constitutional error. (C. 73). The State filed a motion to dismiss that petition, highlighting the flaws therein. (C. 85-104). But instead of filing a response, postconviction counsel stated that she would "rest" on her 651(c) certificate. (C. 73; R. 44, 98-99). She then declined to "argue" during a hearing on the State's motion to dismiss, despite the circuit court's invitation to do so. (R. 102-04). As a result, the State's motion was granted, in Huff's absence, and his petition was dismissed. (R. 104; C. 115).

This Court should reverse that dismissal because postconviction counsel failed to amend Huff's *pro se* petition to state a non-frivolous claim, or file a motion to withdraw, as required by *Greer*. See *Greer*, 212 Ill. 2d at 205-06; see also *People v. Elken*, 2014 IL App (3d) 120580, ¶ 36 ("If counsel finds that defendant's contentions are frivolous or patently without merit at the second stage, [counsel] cannot in good faith continue, [and] must file a motion to withdraw"). Counsel's failure to act in accordance with the law deprived Huff, who was not in court, of his right to the reasonable assistance of counsel, and due process, because it left him without an attorney who would: (1) argue the merits of his *pro se* petition; (2) amend that petition to raise a meritorious claim; or (3) withdraw so that he could argue the merits of his *pro se* claim himself. This Court should remedy that error by remanding the matter for new second-stage proceedings with a different attorney who

will provide Huff with reasonable assistance during constitutionally adequate proceedings.

A. Standard of review

The dismissal of a second-stage petition for postconviction relief is a question of law, which is reviewed *de novo*. *People v. Dupree*, 2018 IL 122307, ¶ 29. The determination of whether a particular procedure satisfied due process is also a question of law, which is reviewed *de novo*. *People v. Pingelton*, 2022 IL 127680, ¶ 28.

B. Reasonable assistance requires postconviction counsel to satisfy both Rule 651(c) *and* the relevant rules of professional conduct.

The Post-Conviction Hearing Act (725 ILCS 5/122-1 *et seq*) has three stages. At the first stage, the circuit court must independently review a petition within 90 days and dismiss petitions that are frivolous or patently without merit. *People v. Hodges*, 234 Ill. 2d 1, 10 (2009). If a *pro se* petition is not summarily dismissed, it advances to second-stage proceedings, where counsel is appointed and the State may respond. 725 ILCS 5/122-4, 122-5; *People v. Edwards*, 197 Ill. 2d 239, 245-46 (2001). If the defendant makes a substantial showing of a constitutional violation during second-stage proceedings, the petition advances to a third-stage evidentiary hearing. 725 ILCS 5/122-6; *People v. Gaultney*, 174 Ill. 2d 410, 418-19 (1996).

The sixth amendment right to counsel does not extend to postconviction proceedings. See *Pennsylvania v. Finley*, 481 U.S. 551, 555 (1987) ("the right to appointed counsel extends to the first appeal of right, and no further"); see also *Johnson v. Avery*, 393 U.S. 483, 487-88, 89 (1969) (federal and state courts have no general obligation to appoint counsel to

prisoners seeking postconviction relief). When the legislature drafted the Post-Conviction Hearing Act, it did so with the expectation that most petitions would be filed *pro se*, and that counsel would only be appointed if the *pro se* petition advanced to second-stage proceedings. Albert E. Jenner, Jr., *The Illinois Post-Conviction Hearing Act*, 9 F.R.D. 347 (1949); see also *Slaughter*, 39 Ill. 2d at 285 ("it was anticipated that most of the petitions . . . would be filed *pro se* by prisoners who had not had the aid of counsel in their preparation"); 725 ILCS 5/122-4 (providing for counsel during second-stage proceedings). But while the Post-Conviction Hearing Act provides for appointed counsel to assist defendants during second-stage proceedings, it does not on its face provide a standard to judge counsel's effectiveness once appointed. See 725 ILCS 5/122-4.

In *Owens*, this Court stated, for the first time, that "[s]ection 122-4 of the Code of Criminal Procedure . . . and Supreme Court Rule 651 together ensure that post-conviction defendants in this State receive *a reasonable level of assistance* by counsel in post-conviction proceedings." *Owens*, 139 Ill. 2d at 359 (italics added). While the "reasonable level of assistance" standard has been the polestar for evaluating postconviction counsel's conduct since 1990, Illinois courts have struggled to articulate what, exactly, "reasonable assistance" entails.

Illinois Supreme Court Rule 651(c) provides some guidance. See Ill. S. Ct. R. 651(c). It requires that the record affirmatively show postconviction counsel: (1) "consulted with defendant by phone, mail, electronic means or in person to ascertain his or her contentions of deprivation of constitutional rights," (2) "examined the record of the proceedings at the trial," and (3)

"made any amendments to the petitions filed *pro se* that are necessary for an adequate presentation of defendant's contentions." Ill. S. Ct. R. 651(c) (eff. Jan. 1, 1970).

Postconviction counsel may satisfy this rule by filing a "651(c) certificate," which creates a rebuttable presumption of compliance with the duties stated therein. *People v. Perkins*, 229 Ill. 2d 34, 52 (2007). However, Rule 651(c) does not, on its own, guarantee a "reasonable level of performance." It merely requires postconviction counsel to complete three specific tasks. See *Greer*, 212 Ill. 2d at 204-05 ("This court has repeatedly held that counsel must perform specific duties in his or her postconviction representation in the circuit court, as set forth in Supreme Court Rule 651(c)"). Those tasks, while essential to ensuring "reasonable assistance," are not exhaustive, and do not encompass all of postconviction counsel's duties vis-a-vis the client, a fact this Court recognized in *People v. Cotto*, 2016 IL 119006: "Rule 651(c) 'is merely a vehicle for ensuring a reasonable level of assistance' [citation] and *should not be viewed as the only guarantee* of reasonable assistance in postconviction proceedings." *Id*. at ¶ 41 (italics added) (citation omitted). For example, "[t]he right to reasonable assistance . . . includes the correlative right to conflict-free representation," even though that duty is not enumerated in Rule 651(c). *People v. Hardin*, 217 Ill. 2d 289, 299-300 (2005). Moreover, this Court has never held (much less suggested) that postconviction counsel can provide "reasonable assistance" while ignoring the other rules of professional conduct. To hold so now would be absurd.

For example, although Rule 651(c) does not include a duty of candor

toward the tribunal; it would be wholly inappropriate for postconviction counsel to "satisfy" Rule 651(c) by misleading the court. See Ill. R. Prof. Conduct, R. 3.3 (requiring "candor toward the tribunal"). The comments to Rule 3.3 make that point clear: "although a lawyer in an adversary proceeding is not required to present an impartial exposition of the law or to vouch for the evidence submitted in a cause, the lawyer must not allow the tribunal to be misled by false statements of law or fact or evidence that the lawyer knows to be false." *Id*. at Comment 2.

Thus, while it is clear that Rule 651(c) requires postconviction counsel to complete three specific tasks all of which are necessary for adequate representation during postconviction proceedings compliance with that rule does not relieve counsel of the general duty to act ethically while representing the defendant. Counsel must still abide by the applicable rules of professional conduct. See Ill. S. Ct. R. 137 (prohibiting counsel from signing a pleading without investigating the assertions therein); Ill. R. Prof. Conduct, R. 3.1 (prohibiting counsel from raising "frivolous" claims); Ill. R. Prof. Conduct, R. 3.3 (prohibiting counsel from misleading the court); Ill. R. Prof. Conduct, R. 1.16 (requiring counsel to withdraw when continued representation "will result in violation of the Rules of Professional Conduct or other law"). If postconviction counsel violates his or her duty to *either* satisfy Rule 651(c) *or* abide by the applicable rules of professional conduct, counsel fails to provide "reasonable representation" as required by the Post-Conviction Hearing Act.

C. If postconviction counsel concludes that the *pro se* petition cannot be amended to state a non-frivolous claim, both due process *and* counsel's ethical obligations require counsel to file a motion to withdraw.

If it feels like this Court has already decided this case, it is because it has. In *Greer*, this Court was asked to determine whether the Post-Conviction Hearing Act permitted appointed counsel to withdraw when counsel concludes that the *pro se* petition is frivolous as written, and cannot be amended to state a non-frivolous claim. *Greer*, 212 Ill. 2d at 195-96.

This Court began its analysis in *Greer* by acknowledging that "reasonable assistance" under the Post-Conviction Hearing Act requires postconviction counsel to comply with Rule 651(c). *Id*. at 204-05 ("counsel must perform specific duties . . . in the circuit court, as set forth in Supreme Court Rule 651(c)"). It then discussed postconviction counsel's ethical duty of candor to the tribunal, with a particular emphasis on Illinois Supreme Court Rule 137, which states, in pertinent part:

> The signature of an attorney or party constitutes a certificate by him that he *has read the pleading*, motion or other paper; that to the best of his knowledge, information, and belief formed after reasonable inquiry *it is well grounded in fact and is warranted by existing law* or a good-faith argument for the extension, modification, or reversal of existing law; and that it is not interposed for any improper purpose, such as to harass or to cause unnecessary delay or needless increase in the cost of litigation.

Greer, 212 Ill. 2d at 205 (quoting Ill. S. Ct. Rule 137) (italics added).

In other words, *Greer* looked beyond Rule 651(c), and discussed postconviction counsel's professional responsibilities when determining what "reasonable assistance" means. At the conclusion of that discussion, this Court held that the Post-Conviction Hearing Act not only *permitted*

appointed counsel to withdraw, but *required* withdrawal when the *pro se* petition is frivolous as written and cannot be amended to state a non-frivolous claim:

> We are confident that the legislature did not intend to require appointed counsel to continue representation of a postconviction defendant after counsel determines that defendant's petition is frivolous and patently without merit. Nothing in the Act requires the attorney to do so, *and the attorney is clearly prohibited from doing so by his or her ethical obligations.*

Id. at 209 (italics added)

Importantly, in coming to this conclusion, this Court considered and rejected several hypothetical scenarios, one of which is identical to the facts presented here. *Id*. at 205-06. Specifically, the scenario in which postconviction counsel concludes that the *pro se* petition lacks merit but nevertheless files a 651(c) certificate, and then "presents" the defendant's *pro se* petition during subsequent hearings: "defendant[] [argues] that Rule 137 poses no problem because '[c]ounsel could simply aver, according to Rule 651(c), that the petition does not need to be amended *and present the petitioner's contentions* according to the dictates of Rule 651(c).'" *Id*. (italics added).

This Court rejected that hypothetical as a clear example of unethical behavior:

> It seems to us that [appellant's] arguments purposefully avoid the pertinent ethical considerations in this case and beg the questions asked, but not adequately answered, in oral argument before this Court: What is defense counsel to do after he or she determines that defendant's petition is frivolous? Is counsel to stand mute at all subsequent proceedings? How can counsel, ethically, "present petitioner's contentions" when counsel *knows* those contentions are frivolous? **Obviously, the answer is counsel cannot**.

Id. at 206 (italics in original; bold added). In other words, *Greer* stated, in no uncertain terms, that postconviction counsel *cannot* ethically continue to represent a defendant when counsel *knows* the defendant's claims lack merit.

Years later, this Court reiterated that point in *People v. Kuehner*, 2015 IL 117695, a case in which this Court was asked to determine whether postconviction counsel may move to withdraw when the defendant's *pro se* petition advances to second-stage proceedings on a judicial finding that the claims are not "frivolous or patently without merit." *Kuehner*, 2015 IL 117695, ¶ 21. In *Kuehner*, this Court held that counsel must still move to withdraw when counsel "discovers something" that prohibits counsel from "actually presenting the defendant's claims:"

> [T]here may be occasions when, in the course of fulfilling his or her Rule 651(c) responsibilities, *appointed counsel discovers something that ethically would prohibit counsel from actually presenting the defendant's claims to the court*. . . [H]owever, [in such instances] counsel may not simply move to withdraw on the grounds that the *pro se* claims are frivolous or patently without merit, as the trial court already has ruled expressly to the contrary. Rather, in such cases, appointed counsel bears the burden of demonstrating, with respect to each of the defendant's *pro se* claims, why the trial court's initial assessment was incorrect.

Id. at ¶ 21 (italics added).

In other words, even when the *pro se* petition advances on a judicial finding that it has arguable merit, postconviction counsel may still have an ethical obligation to withdraw. *Id*. However, in such cases, postconviction counsel cannot simply aver that the defendant's claims lack merit; rather, counsel must show, by filing a detailed motion to withdraw, that the defendants claims are frivolous or patently without merit. *Id*.

Greer and *Kuehner* have resulted in several well-reasoned appellate

decisions holding that postconviction counsel has an ethical duty to withdraw when counsel concludes that the defendant's *pro se* petition is frivolous as written, and cannot be amended to state a non-frivolous claim. See *e.g.*, *People v. Shortridge*, 2012 IL App (4th) 100663, ¶ 13 ("If counsel believes that his client's claims are frivolous or without merit his ethical obligation is to seek a withdrawal as counsel"); *People v. Jackson*, 2015 IL App (3d) 130575, ¶ 16 ("If appointed postconviction counsel believes that a client's postconviction petition is frivolous and patently without merit, then counsel should file a motion to withdraw as counsel"); *Elken*, 2014 IL App (3d) 120580, ¶ 36 ("If counsel finds that defendant's contentions are frivolous or patently without merit at the second stage, he cannot in good faith continue, so he must file a motion to withdraw"); *Moore*, 2018 IL App (2d) 170120, ¶ 33 ("If . . . appointed counsel determines that the *pro se* petition is frivolous or patently without merit, appointed counsel may and should move to withdraw from representation").

But the appellate court has not been unanimous in its interpretation of *Greer* and *Kuehner*. In other cases including this one the appellate court has come to the conclusion when postconviction counsel determines that a *pro se* petition cannot be amended to adequately state a meritorious claim, counsel can *either* file a motion to withdraw *or* stand on the defendant's frivolous *pro se* petition. See *e.g.*, *Huff*, 2022 IL App (1st) 201278-U, ¶ 36 ("while *Greer* authorizes withdrawal of postconviction counsel where the petition cannot be amended to state a meritorious claim, it nowhere creates a *per se* requirement that counsel must withdraw); *People v. Malone*, 2017 IL App (3d) 140165, ¶ 12 (same); *People v. Dixon*, 2018 IL App (3d) 150630, ¶ 22

("If counsel had found all the claims in the petition to be frivolous, the appropriate procedure would have been to [either] stand on the *pro se* petition or seek to withdraw as counsel"); *People v. Pace*, 386 Ill. App. 3d 1056, 1062 (4th Dist. 2008) (same).

This Court should reject this latter line of cases for several reasons. First, they ignore this Court's clear pronouncement in *Greer* that "appointed counsel" cannot "*continue* representation of a postconviction defendant after counsel determines that defendant's petition is frivolous and patently without merit." *Greer*, 212 Ill. 2d at 209 (italics added). This is true regardless of whether counsel comes to this conclusion before filing a 651(c) certificate, or after the State files a motion to dismiss. In either case, postconviction counsel cannot *continue* to "present petitioner's contentions" when counsel "knows" they are frivolous. See *Greer*, 212 Ill. 2d at 206.

Second, none of the contradictory cases discuss Rule 137, which prohibits an attorney from filing a signed "pleading, motion or other paper," absent a "belief formed after reasonable inquiry" that the filing "*is well grounded in fact and is warranted by existing law*." Ill. S. Ct. Rule 137(a) (italics added). Once postconviction counsel comes to the conclusion that the *pro se* petition is frivolous as written, and cannot be amended to state a non-frivolous claim, it is misleading (at best) and dishonest (at worst) for counsel to sign a 651(c) certificate asserting that all the necessary amendments have been made "for an adequate presentation of the [defendant's] contentions." See *Greer*, 212 Ill. 2d at 205-06. Such an assertion implies, if not outright states, that the defendant's petition is *legally* adequate to proceed under the Post-Conviction Hearing Act. Postconviction counsel cannot then ethically

stand on the defendant's facially frivolous petition when counsel "knows" the petition cannot advance. *Id*. at 206 (How can counsel, ethically, "present petitioner's contentions" when counsel *knows* those contentions are frivolous? Obviously, the answer is counsel cannot.") (italics in original).

The Illinois Rules of Professional Conduct are equally clear on this point. Rule 3.1 prohibits an attorney from bringing, defending, or asserting "frivolous" claims. Ill. R. Prof. Conduct, R. 3.1 ("Meritorious claims and contentions"). Rule 3.3 prohibits an attorney from making misleading statements, or allowing the client to make misleading statements. Ill. R. Prof. Conduct, R. 3.3 ("Candor toward the tribunal"). And Rule 1.16 requires an attorney to withdraw when continued representation "will result in violation of the Rules of Professional Conduct or any other law." Ill. R. Prof. Conduct, R. 1.16 ("Declining or terminating representation"). These rules, like Rule 137, prohibit an attorney from continuing "representation of a postconviction defendant after counsel determines that [a] defendant's petition is frivolous and patently without merit." *Greer*, 212 Ill. 2d at 209.

In this case, postconviction counsel did precisely what *Greer*, Rule 137, and the applicable rules of professional conduct prohibit she certified the adequacy of Huff's petition, which was frivolous as written, and then "rested" on that certification during "all [the] subsequent proceedings." (C. 73; R. 98-99, 102-04). This Court should reaffirm that postconviction counsel cannot ethically "present the petitioner's contentions when counsel *knows* those contentions are frivolous." *Greer*, 212 Ill. 2d at 206 (italics in original). Doing so renders counsel's representation unreasonable.

Third, requiring postconviction counsel to file a motion to withdraw

when, in counsel's opinion, the *pro se* petition is frivolous as written and cannot be amended to state a non-frivolous claim is sound public policy. As discussed above, Rule 651(c) requires postconviction counsel to confer with the defendant, review the record, and investigate the merits of the defendant's claims. Ill. S. Ct. Rule 651(c). If, after completing these tasks, postconviction counsel concludes that the defendant's claims lack merit, neither postconviction counsel, nor the defendant, are prejudiced by requiring counsel to reduce that opinion to writing, and attach it to a motion to withdraw. *Greer*, 212 Ill. 2d at 209; *Kuehner*, 2015 IL 117695, ¶ 21.

In fact, filing a motion to withdraw under such circumstances is constitutionally required. U.S. CONST., amend. XIV, § 1; Ill. CONST. 1970, art. I, § 2. Due process requires that postconviction defendants be given notice of appointed counsel's conclusion that their *pro se* claims lack merit, and an opportunity to challenge that conclusion by filing a written objection. See *People v. Pingelton*, 2022 IL 127680, ¶ 36 ("The fundamental requirements of due process are notice of [a] proceeding and an opportunity to present any objections"); *Anders v. California*, 386 U.S. 738, 744 (1967) ("fair process can only be attained where counsel acts in the role of an active advocate in behalf of his client"). These rights are particularly important when, as is the case here, counsel waives the defendant's presence at a dispositive hearing on the *pro se* petition, and then makes no effort to support that petition against the State's arguments for dismissal. (R. 102-04). Compelling representation under such circumstances is tantamount to silencing the defendant altogether because, while the defendant cannot address the court, he cannot rely on postconviction counsel to do so either. See *People v. Serio*, 357 Ill.

App. 3d 806, 815 (2d Dist. 2005) (defendants have "no right to both self-representation and the assistance of counsel") accord *People v. James*, 362 Ill. App. 3d 1202, 1205 (4th Dist. 2006) (defendants have no right to "hybrid representation").

The contrary is true when postconviction counsel files a motion to withdraw. When such a motion is filed, the defendant is given notice of the motion and "a meaningful opportunity to respond." See *People v. McMillen*, 2021 IL App (1st) 190442, ¶ 17 (holding that when postconviction counsel files a motion to withdraw, the defendant must be provided with "notice and a meaningful opportunity to respond") accord *People v. Bryant*, 2022 IL App (2d) 200279, ¶ 19 (same); *Elken*, 2014 IL App (3d) 120580, ¶ 36 (same). That is, the defendant must be "afforded the opportunity to prepare for such an attack on his petition" by counsel "and to make any arguments in rebuttal." *Bryant*, 2022 IL App (2d) 200279, ¶ 19 (quoting *Elken*, 2014 IL App (3d) 120580, ¶ 36).

These due process requirements have been codified by Illinois Supreme Court Rule 13, which requires counsel to provide the client with "reasonable notice of the time and place of the presentation of [a] motion for leave to withdraw." See Ill. S. Ct. R. 13(c). This, of course, is nothing new. Appointed counsel on direct appeal has a constitutional duty to file a detailed motion to withdraw if, in counsel's opinion, an appeal would lack arguable merit. See *Anders*, 386 U.S. at 744. Once an "*Anders* motion" is filed, the defendant is provided with an opportunity to respond, after which, the appellate court rules on the motion *and* decides whether the defendant's appeal presents an issue of arguable merit. *Id*. If the appellate court disagrees with counsel's

conclusion, then counsel is not permitted to withdraw.

The local rules for the Third District Appellate Court extend this procedure it to appeals involving collateral proceedings. See Local Rules of the Ill. App. Ct., 3d Dist., R. 105: Motions to Withdraw as Counsel Finley & Anders ("Where counsel finds that no issue of potential merit can be raised on appeal and moves to withdraw representation, counsel shall file a motion to withdraw and supporting memorandum establishing review of the record and setting forth any potential issues that counsel ultimately deems meritless"). When counsel files such a motion, it must be served on the defendant, who is then afforded 35 days to file a response. *Id.*[1]

In addition to these rules, the Office of the State Appellate Defender has developed a practice of filing motions to withdraw in collateral appeals when appointed counsel cannot find an issue of arguable merit to raise on a defendant's behalf. See *e.g.*, *People v. Crenshaw*, 2022 IL App (4th) 210581-U, ¶ 2 (observing that OSAD's motion to withdraw was filed pursuant to this Court's decision in *Greer*).[2]

This procedure, required by *Greer*, is not only fair, but promotes judicial economy by providing courts with a basis to conclude that appointed counsel has reviewed the record, and appropriately assessed the merits of the

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[1] The First and Fourth Districts require counsel to comply with Illinois Supreme Court Rule 13 when filing motions to withdraw. See Local Rules of the Ill. App. Ct., 1st Dist., R. 4(ℓ), 4th Dist., 102(c). There are no local rules governing motions to withdraw in the Second and Fifth Districts, but, presumably, counsel must follow Rule 13 in those jurisdictions as well.

[2] This unpublished decision has been attached to the appendix of this brief, as required by Illinois Supreme Court Rule 23. See Ill. S. Ct. Rule 23(e)(1) (eff. Jan. 1, 2021).

defendant's claims. Allowing postconviction counsel to "stand" on the merits of a facially frivolous petition does the opposite. It relieves postconviction counsel of the burden to either defend the defendant's *pro se* claims, or amend them to cure any defects, and shifts the burden to the State and ultimately the court to make a determination on the merits without the benefit of an adversarial proceeding. This is precisely what occurred here. Postconviction counsel was appointed to assist Huff in presenting his claim, yet she did nothing to advance that claim in any meaningful way. (C. 73; R. 98-99, 102-04). In fact, she never even asserted it had merit. (C. 73). Instead, she filed a 651(c) certificate stating that it was "adequately" presented. (C. 73). She then stood silent as the State argued that Huff's claim lacked merit. (R. 98-99, 102-04). Such representation is unreasonable.

If postconviction counsel has read the record and concluded that the *pro se* petition lacks merit, counsel *must* reduce that opinion to writing, and attach it to a motion to withdraw. *Greer*, 212 Ill. 2d at 209; *Kuehner*, 2015 IL 117695, ¶ 21. If, on the other hand, counsel believes the *pro se* petition has merit, or could have merit, counsel must amend it, as necessary, and affirmatively defend it in the face of the State's motion to dismiss. Ill. S. Ct. Rule 651(c). When counsel does neither, and instead "rests" on defendant's *pro se* petition, counsel's representation is unreasonable because counsel: (a) acts unethically, (b) silences the defendant; and (c) nullifies the very purpose of second-stage proceedings, which is to provide postconviction litigants with a meaningful opportunity to flesh out their *pro se* claims.

The Post-Conviction Hearing Act does not permit appointed counsel to be a potted plant. This Court should reiterate that postconviction counsel

cannot ethically continue to represent a defendant after concluding that the *pro se* petition is frivolous and cannot be amended to state a non-frivolous claim. See *Greer*, 212 Ill. 2d at 209; *Kuehner*, 2015 IL 117695, ¶ 21.

D. Huff was denied his right to the reasonable assistance of counsel.

As discussed above, when postconviction counsel is presented with a *pro se* petition that is frivolous as written, postconviction counsel has only two options: (1) amend the petition, or (b) file a motion to withdraw if, in counsel's opinion, the petition cannot be amended to state a non-frivolous claim. (Supra at 6-22); *Greer*, 212 Ill. 2d at 205-207, 209; *Perkins*, 229 Ill. 2d at 44 (recognizing that postconviction counsel's duty to adequately present the defendant's claims "necessarily includes attempting to overcome procedural bars . . . that will result in dismissal of a petition if not rebutted"). In this case, counsel did neither. She did not amend Huff's petition, which was frivolous as written, (C. 73), and then "rested" on Huff's *pro se* petition when asked to respond to the State's motion to dismiss. (R. 102-04).

If, after reading the record and consulting with Huff, postconviction counsel believed she could overcome the procedural bars raised in the State's motion to dismiss, she had a duty to file an amended petition addressing those bars. See *Perkins*, 229 Ill. 2d at 44, 49-50; see also *People v. Turner*, 187 Ill. 2d 406, 412 (1999) ("Rule 651(c) plainly requires that appointed post-conviction counsel make any amendments to the petitions filed *pro se* that are necessary for an adequate presentation of petitioner's contentions"). Her failure to do so was unreasonable, and rebuts any presumption created by her 651(c) certificate that she provided Huff with the level of

representation required by the Post-Conviction Hearing Act. If, on the other hand, she completed her investigative duties, but concluded that Huff's petition could not be amended to rebut the State's claims, she had a duty to withdraw, explaining why she could not continue to advance Huff's claims in the face of the State's motion to dismiss. *Greer*, 212 Ill. 2d at 205-207, 209; *Kuehner*, 2015 IL 117695, ¶ 21. She could not, however, pursue a third option standing on a *pro se* petition that required dismissal absent an amendment to address the deficiencies highlighted by the State in its motion to dismiss.

By "resting" on Huff's *pro se* petition, and waiving his appearance at the first (and only) dispositive hearing on the State's motion to dismiss, (C. 73; R. 98-99, 102-04), postconviction counsel denied Huff the opportunity to defend his claim *pro se*. See *Serio*, 357 Ill. App. 3d at 815 (defendants are not entitled to hybrid representation). The result is a complete breakdown in the adversarial process, undermining the reliability of the proceedings. Since postconviction counsel did not amend Huff's petition, or move to withdraw, the record is completely silent as to whether Huff had any additional claims to raise in an amended petition or, alternatively, could have asserted a meritorious argument in response to the State's motion to dismiss.

This is precisely the sort of underdeveloped postconviction record the appointment of counsel is designed to prevent. See *People v. Jackson*, 2021 IL App (1st) 190263, ¶ 45 (remanding for new second-stage proceedings because postconviction counsel's conduct created an "empty record" unsuitable for appellate review). It is also the reason the defendant is not required to prove prejudice when denied the reasonable assistance of counsel because

prejudice cannot be shown on the face of an incomplete record. See *id*.; see also *People v. Suarez*, 224 Ill. 2d 37, 50-51 (2007) (holding that unreasonable assistance of counsel claims cannot be reviewed for harmless error); *People v. Nitz*, 2011 IL App (2d) 100031, ¶ 18 ("a defendant is not required to make a positive showing that his counsel's failure to comply with Rule 651(c) caused prejudice"); *People v. Yaworski*, 2014 IL App (2d) 130327, ¶ 14 (holding that postconviction counsel's ethical violation of laboring under a conflict of interest required remand without regard to whether counsel complied with Rule 651(c)).

Here, postconviction counsel did not provide reasonable assistance as required by the Post-Conviction Hearing Act. This matter must therefore be remanded for new second-stage proceedings with different counsel. See *People v. Schlosser*, 2017 IL App (1st) 150355, ¶ 36 (holding that the appointment of new counsel is required when a postconviction matter is remanded because counsel provided unreasonable assistance); see also *Nitz*, 2011 IL App (2d) 100031 at ¶¶ 19, 21 (same); *People v. Jones*, 2016 IL App (3d) 140094, ¶¶ 33-34 (same); *Shortridge*, 2012 IL App (4th) 100663 at ¶¶ 14-15 (same).

E. Postconviction counsel's unreasonable assistance denied Huff his right to due process.

The right to procedural due process is guaranteed by the federal and state constitutions. U.S. CONST., amend. XIV, § 1; Ill. CONST. 1970, art. I, § 2. "The fundamental requirements of due process are notice of the proceeding and an opportunity to present any objections." *People v. Cardona*, 2013 IL 114076, ¶ 15. This right guarantees "'the opportunity to be heard at a

meaningful time and in a meaningful manner.'" *People v. Stoecker*, 2020 IL 124807, ¶ 17 (quoting *In re D.W.*, 214 Ill. 2d 289, 316 (2005)). "Illinois courts have recognized that basic notions of fairness dictate that a petitioner be afforded notice of, and a meaningful opportunity to respond to, any motion or responsive pleading." *Id.* ¶ 20 (collecting cases). However, because due process is a flexible concept, "not all circumstances call for the same type of procedure." *Id.* (citing *People ex rel. Birkett v. Konetski*, 233 Ill. 2d 185, 201 (2009)). A petitioner in postconviction proceedings has a right to procedural due process, and the protection of that right is of "critical importance." *Pingelton*, 2022 IL 127680, ¶ 36 (quoting *People v. Kitchen*, 189 Ill. 2d 424, 434-35 (1999)).

In this case, Huff was denied his right to procedural due process for two reasons. First, he was constructively silenced because he was appointed an attorney who would not: (a) argue the merits of his *pro se* petition, (b) amend his *pro se* petition to present a non-frivolous claim, or (c) withdraw so that he could argue his claim himself. (C. 73; R. 98-99, 102-04); *Serio*, 357 Ill. App. 3d at 815 (defendants are not entitled to hybrid representation); see also *Anders*, 386 U.S. at 744 (recognizing that due process requires counsel to either actively advocate on the client's behalf, or withdraw). These concerns are particularly acute when the proceedings involve the defendant's first petition for postconviction relief, as the dismissal of that petition will subject any future claims to the more stringent cause-and-prejudice test for advancement under the Post-Conviction Hearing Act. See *People v. Shellstrom*, 216 Ill. 2d 45, 55 (2005) (recognizing that "the obstacles standing in the way of filing a successive postconviction petition are not easy to

overcome").

Second, Huff was actually silenced because postconviction counsel waived his appearance at the only hearing on the State's motion to dismiss. (R. 102-04). As a result, he was physically unable to address the court. Notably, there is nothing in the record to demonstrate that Huff knew a dispositive hearing was going to occur, let alone that counsel would stand silent in the face of the State's arguments for dismissal. (C. 73; R. 98-99, 102-04). At a minimum, Huff should have been brought to court and permitted to defend his claims because appointed counsel had no intention of doing so herself. (C. 73; R. 98-99, 102-04). Alternatively, Huff should have been given notice of counsel's apparent conclusion that his *pro se* petition lacked merit, and an opportunity to either amend his petition, or withdraw it to avoid the harsh consequences of dismissal on any future claims he may wish to bring.

This Court's recent decision in *Pingelton* is instructive. See *Pingelton*, 2022 IL 127680. In *Pingelton*, postconviction counsel was appointed after the defendant's *pro se* petition advanced to second-stage proceedings. *Id*. at ¶ 11. The State filed a motion to dismiss, but instead of responding to the State's motion, or amending the *pro se* petition, postconviction counsel filed a 651(c) certificate and moved to withdraw because, in counsel's opinion, the defendant's *pro se* claims lacked merit. *Id*. The defendant challenged that analysis by filing two written responses in the circuit court. *Id*. at ¶ 14-16. The circuit court then heard arguments on the State's motion to dismiss, and counsel's motion to withdraw. *Id*. at ¶ 17. Importantly, while the defendant was permitted to argue against counsel's motion to withdraw, he was not

permitted to argue against the State's motion to dismiss. *Id*. Two weeks later, the circuit court issued a written order granting both counsel's motion to withdraw *and* the State's motion to dismiss. *Id*. at ¶ 20.

This Court held that the defendant was denied due process because, among other things, he was only permitted to respond to counsel's motion to withdraw, leaving the State's claims unopposed. *Id*. ¶ 40. This Court also recognized that because the defendant "was still represented by counsel, [he] had no right to counter the State's argument directly." *Id*.

The due process violation in this case is even more egregious. Like the defendant in *Pingelton*, Huff was never provided with an opportunity to respond to the State's motion to dismiss. (R. 102-104). Postconviction counsel did not file a written response, and she waived Huff's appearance at the only hearing on the State's motion, where she then declined to argue on Huff's behalf. (R. 98-99, 102-04). The result is that the State's arguments were not only uncontested, but that Huff was physically excluded from the most important hearing on his petition. (R. 98-99, 102-04).

Because the consequences of this due process error which was caused by counsel's unreasonable representation are not ascertainable, they not amenable to harmless error review. *Pingelton*, 2022 IL 127680, ¶¶ 49-50 ("'it is improper to affirm the dismissal of a post-conviction petition when [the] court finds that post-conviction counsel's performance was so deficient that it amounts to virtually no representation at all'") quoting *Suarez*, 224 Ill. 2d at 48. But even if this error could be reviewed for harmlessness, this Court should find that it was not harmless for two reasons. First, Huff's attorney never filed a motion to withdraw. Consequently, unlike the defendant in

Pingelton, Huff was never provided an opportunity to flesh out his claim by filing a responsive pleading or arguing in court. (C. 73; R. 98-99, 102-04). Second, postconviction counsel waived Huff's appearance during the only hearing on the State's motion to dismiss, and therefore he was physically unable to defend his claim or object to the procedure used to dismiss it. (R. 102-04).

Notably, there were several ways Huff could have responded. He could have amended his claim, added a new claim, or withdrawn his petition to avoid the harsh consequences of dismissal on any future claims he may wish to bring. See *Shellstrom*, 216 Ill. 2d at 55. Alternatively, he could have challenged the reasonableness of postconviction counsel's representation by disclosing the content of their private conversations to rebut the assertions in her 651(c) certificate.

For these reasons, this record, unlike the record in *Pingelton*, is too undeveloped to support a finding that this error was harmless beyond a reasonable doubt. See *id*. at ¶ 45 (recognizing that some due process errors will not be "amenable" to harmless error review "and that each case must be judged on its own facts"); see also *Yaworski*, 2014 IL App (2d) 130327, ¶ 14 (recognizing that when an ethical violation, such as a conflict of interest, creates uncertainty in the record regarding the reasonableness of counsel's representation, the matter must be remanded for new second-stage proceedings). Since postconviction counsel's unreasonable representation deprived Huff of his due process right to present, amend, defend, or withdraw his *pro se* petition, this Court should remand the matter for new second-stage proceedings with a different attorney who will ensure that Huff is not denied

his constitutional rights.

F. Summary

Huff was denied his statutory right to the reasonable assistance of counsel. His *pro se* petition was frivolous as written, and thus postconviction counsel had an ethical duty to either: (a) amend it to state a non-frivolous claim, as required by Rule 651(c); or (b) move to withdraw, as required by *Greer*, 212 Ill. 2d at 205-06, 209. Postconviction counsel's failure to choose from either of these two options rendered her conduct unreasonable, requiring remand for new second-stage proceedings. See *Suarez*, 224 Ill. 2d at 51-50; *Nitz*, 2011 IL App (2d) 100031, ¶ 18; *Yaworski*, 2014 IL App (2d) 130327, ¶ 14.

Counsel's unreasonable assistance also deprived Huff of his right to due process of law, because it set the stage for counsel to waive his appearance during the only hearing on the State's motion to dismiss, during which counsel provided absolutely no advocacy on Huff's behalf. (R. 102-04). Because the full effect of this error is not ascertainable, it should not be subject to harmless error review. *Pingelton*, 2022 IL 127680, ¶¶ 49-50; *Jackson*, 2021 IL App (1st) 190263, ¶ 45; *Yaworski*, 2014 IL App (2d) 130327, ¶ 14; *Suarez*, 224 Ill. 2d 37, 51-50. But even if it were, this due process error was not harmless because Huff was never provided an opportunity to: (a) challenge counsel's apparent belief that his *pro se* petition was frivolous; (b) respond (in any way) to the State's motion to dismiss, or (c) withdraw his petition to avoid the harsh consequences of dismissal on any future claims he may wish to bring. See *Shellstrom*, 216 Ill. 2d at 55.

This Court should reverse the judgment of the appellate court, and

remand the matter for new second-stage proceedings with an attorney who will ensure Huff receives his constitutional right to due process during postconviction proceedings.

CONCLUSION

For the foregoing reasons, Richard Huff, petitioner-appellant, respectfully requests that this Court reverse the order dismissing his second-stage petition for postconviction relief, and remand the matter for new second-stage proceedings with new counsel under the Post-Conviction Hearing Act.

Respectfully submitted,

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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 or words contained in 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, is 31 pages.

/s/John R. Breffeilh
JOHN R. BREFFEILH
Assistant Appellate Defender

APPENDIX TO THE BRIEF

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IN THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS
COUNTY DEPARTMENT, CRIMINAL DIVISION

PEOPLE OF THE STATE OF ILLINOIS

v.

RICHARD HUFF

Case No. 97CR2608101

CERTIFIED REPORT OF DISPOSITION

The following disposition was rendered before the Honorable Judge CAROL M. HOWARD ON NOVEMBER 02, 2020. THE STATE'S MOTION TO DISMISS IS GRANTED. CASE OFF CALL.

I hereby certify that the foregoing has been entered of record on the above captioned case.

Date: NOVEMBER 09, 2020

Dorothy Brown

Dorothy Brown, Clerk of the Circuit Court

DOROTHY BROWN, CLERK OF THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS

Corrected

corrected copy

2022 IL App (1st) 201278-U

NOTICE
The text of this order may be changed or corrected prior to the time for filing of a Petition for Rehearing or the disposition of the same.

SECOND DIVISION
April 12, 2022

No. 1-20-1278

NOTICE: This order was filed under Supreme Court Rule 23 and may not be cited as precedent by any party except in the limited circumstances allowed under Rule 23(e)(1).

IN THE
APPELLATE COURT OF ILLINOIS
FIRST JUDICIAL DISTRICT

THE PEOPLE OF THE STATE OF ILLINOIS, Respondent-Appellee, v. RICHARD HUFF, Petitioner-Appellant.	)	Appeal from the Circuit Court of Cook County. No. 97 CR 26081 Honorable Carol M. Howard, Judge Presiding.

PRESIDING JUSTICE FITZGERALD SMITH delivered the judgment of the court.
Justices Lavin and Cobbs concurred.

ORDER

¶ 1 *Held*: The circuit court's second stage dismissal of the petitioner's postconviction petition is affirmed where the petitioner failed to establish that his appointed postconviction counsel rendered unreasonable assistance by not substantially complying with Rule 651(c) (Ill. S. Ct. 651(c) (eff. July 1, 2017)) when she chose to rest on his *pro se* petition.

¶ 2 After a jury trial in the circuit court of Cook County, the petitioner, Richard Huff was

convicted of first-degree murder in the beating death of his five-year-old daughter and sentenced to natural life in prison. After the petitioner filed a *pro se* postconviction petition pursuant to the Post-Conviction Hearing Act (725 ILCS 5/122-1 *et seq.* (West 2016)), the petition was automatically advanced to the second stage of postconviction proceedings, and the circuit court appointed counsel to represent him. After appointed counsel filed a certificate pursuant to Rule 651(c) (Ill. S. Ct. 651(c) (eff. July 1, 2017)) stating that she would not amend the *pro se* petition, the State filed a motion to dismiss, which the circuit court granted. The petitioner now appeals contending that his postconviction counsel failed to provide a reasonable level of assistance as required under Illinois Supreme Court Rule 651(c) (eff. July 1, 2017) by failing to either amend his *pro se* petition to adequately present his claim of error or withdraw from the case and state the reasons why the petitioner's claim lacked merit. The petitioner requests that we reverse the dismissal of his *pro se* petition and remand for further second-stage proceedings. For the following reasons, we affirm.

¶ 3 I. BACKGROUND

¶ 4 The record before us reveals the following relevant facts and procedural history. In September 1997, the petitioner was indicted with one count of first-degree murder for repeatedly beating the victim, his five-year-old daughter, with a belt over a period of several hours, ultimately resulting in her death. 720 ILCS 5/9-1(a)(2) (West 1996)). The petitioner proceeded with a jury trial at which the following relevant evidence was adduced.

¶ 5 On September 10, 1997, the 26-year-old petitioner returned home after midnight and found the victim awake because she had not finished her kindergarten homework, which consisted of tracing and coloring. After learning that the victim's teacher had complained that the victim had not been turning in her homework, the petitioner told the victim that she had 15 minutes to finish

her assignment. At the end of the 15 minutes, the petitioner hit the victim with a belt and, after noticing that she had placed playing cards in her underwear to protect against the belt, he told her to take off her clothes. The petitioner then gave the victim another 15-minute deadline.

¶ 6 Over the next three hours, the petitioner repeatedly whipped the naked victim every 15 to 20 minutes with a leather belt and electrical wire. During that time, the victim tried to run away from the petitioner several times. Consequently, she fell and hit her head numerous times. At the end of the three hours, the victim was naked, bleeding and bruised.

¶ 7 While the petitioner's girlfriend, who was also present in the home, asked the petitioner to "cool out," the petitioner retorted that she had no right to tell him how to discipline his children, and continued beating the victim. In fact, the petitioner did not cease the whipping until his girlfriend told him that the victim was bleeding, which he failed to notice.

¶ 8 After the victim washed herself, the petitioner put her to bed, but kept her awake because he was worried about her head injuries. A few hours later, he found her unresponsive, lying on the floor of her bedroom. After being taken to the hospital, the victim was pronounced dead. An autopsy subsequently revealed that she died from multiple blunt force trauma.

¶ 9 At the close of trial, the jury found the petitioner guilty of first-degree murder and the parties proceed with sentencing.

¶ 10 The State sought the imposition of the death penalty, arguing that because the victim was under 12 years old, the offense was exceptionally brutal and heinous and indicative of wanton cruelty. The petitioner waived his right to a jury for the death penalty sentencing phase and agreed that the circuit court alone should determine whether he was eligible for the death penalty. The circuit court found that the defendant was eligible but declined to impose the death penalty based on the petitioner's lack of prior criminal history. Nonetheless, finding that the petitioner's conduct

was "extremely brutal or heinous" the court sentenced the petitioner to natural life imprisonment.

¶ 11 The petitioner appealed his conviction and sentence, arguing, *inter alia*, that his natural life sentence violated *Apprendi v. New Jersey*, 530 U.S. 466 (2000) because the sentence was based on a finding of "exceptionally brutal and heinous behavior" made by the trial judge, rather than a jury. This appellate court affirmed the petitioner's conviction and sentence, finding that *Apprendi* did not apply to a circuit court's finding of "exceptionally brutal and heinous behavior," and that where a defendant is first found eligible for the death penalty, the circuit court is permitted to impose a sentence of natural life without implicating *Apprendi*. See *People v. Huff*, No. 1-00-2414 (September 28, 2001) (unpublished order pursuant to Illinois Supreme Court Rule 23) (hereinafter *Huff I*).

¶ 12 On February 10, 2005, the petitioner filed a *pro se* petition for relief from judgment pursuant to section 2-1401 of the Code of Civil Procedure (Code) (735 ILCS 5/2-1401 (West 2004)), again asserting, *inter alia*, that his extended term sentence was unconstitutional under *Apprendi*. After the State filed a motion to dismiss, the circuit court ruled in favor of the State, finding that the petitioner's section 2-1401 petition was untimely and that the petitioner's sentencing claims were barred by the doctrine of *res judicata*. On November 9, 2006, this appellate court affirmed the circuit court's decision, finding that the petitioner's claims were frivolous and lacked merit. *People v. Huff*, No. 1-05-1769 (November 9, 2006) (unpublished order pursuant to Illinois Supreme Court Rule 23) (hereinafter *Huff II*). The appellate court reiterated that on direct appeal it had already held that when a defendant is found eligible for the death penalty, the circuit court may impose a natural life sentence without implicating *Apprendi*. *Id.* The court further agreed that the petitioner's claims were barred by *res judicata* and that the petition had been untimely

filed. *Id.*

¶ 13 On July 19, 2016, the petitioner filed the instant *pro se* postconviction petition again contending that his natural life sentence, based on the trial judge's finding that the offense was "brutal and heinous" was unconstitutional under *Apprendi*. The petitioner recognized that he had already raised this issue and that it had been rejected by this appellate court twice. Nonetheless, he asserted that the law had evolved since his direct appeal, and that therefore the court should reconsider his claim. With respect to the timeliness of his petition, the petitioner asserted that because his petition advanced a claim that the court lacked the inherent power to enter the order involved, *i.e.*, a claim that his sentence was void, the claim was not subject to the ordinary statutory limitation period for post-conviction petitions and could be raised at any time.

¶ 14 On February 15, 2017, the petition was docketed for second stage postconviction proceedings, and the circuit court appointed the Office of the Cook County Public Defender to represent the petitioner. On June 2, 2017, appointed postconviction counsel appeared on behalf of the petitioner and asked the court to order the release of the petitioner's transcripts and records from the clerk of the circuit court.

¶ 15 Over the next year and a half, postconviction counsel repeatedly informed the court that the records in the petitioner's case had yet to be released to her by the clerk's office. On January 3, 2018, counsel presented a motion for rule to show cause against the clerk of the circuit court, which the court granted.

¶ 16 On February 2, 2018, postconviction counsel informed the court that she had finally received the records from the clerk's office and that she would begin reviewing them. At the next several court hearings, counsel informed the court that she was still reviewing the records and that because the petitioner was raising an *Apprendi* claim she wanted to reach out to a colleague who

had handled a similar issue before. On June 13, 2018, counsel filed a certificate pursuant to Illinois Supreme Court Rule 615(c) (eff. July 1, 2017) certifying that she had: (1) consulted with the petitioner by phone, mail, electronic means or in person to ascertain his contentions of deprivations of constitutional rights; (2) obtained and examined the record of proceedings prior to and including the trial and sentencing in the case; (3) read and researched the issues presented in the petitioner's *pro se* petition; and (4) not prepared a supplemental petition because the *pro se* petition "adequately set[] forth the petitioner's claim of deprivation of his constitutional rights."

¶ 17 On December 12, 2019, the State filed a motion to dismiss the petition on three grounds. First, the State argued that the petitioner was procedurally barred from filing the petition because it was filed beyond the statute of limitations. The State pointed out that the petition was due on May 2, 2002, but that it was not filed until July 19, 2016. In addition, the State pointed out that the petitioner had not asserted any facts showing that the delay in filing was not a result of his own culpable negligence. Moreover, in response to the petitioner's assertion that his sentence was void, and could therefore be attacked at any time, the State contended that the void sentence rule was abolished by *People v. Castleberry*, 2015 IL 116916. Second, the State argued that the petitioner's claim was barred by *res judicata* because the appellate court had considered the same *Apprendi* arguments in affirming his sentence on direct appeal and in affirming the dismissal of his section 2-1401 petition for relief from judgment (735 ILCS 5/2-1401 (West 2004)). Lastly, the State asserted that the petitioner's *Apprendi* claim should be dismissed because the petitioner failed to establish prejudice. Specifically, the State argued that even if there had been an *Apprendi* error, any such error was necessarily harmless because no *reasonable* jury would have found that the petitioner's conduct in beating his five-year-old daughter to death was not brutal and heinous and

indicative of wanton cruelty.

¶ 18 After the State filed its motion, the case was continued several times. On October 27, 2020, postconviction counsel informed the court that she "had the chance to review the case at length," and that she would not be filing a written response. Instead, she stated that she would be resting on her Rule 651(c) certificate and the petitioner's *pro se* postconviction petition.

¶ 19 On November 2, 2020, the court heard arguments on the State's motion to dismiss via Zoom. The petitioner's postconviction counsel waived the petitioner's appearance and rested on his *pro se* petition. The State reiterated its most salient argument, *i.e.*, that the petitioner's claim was barred by *res judicata* because the *Apprendi* issue had already been considered and rejected twice by the appellate court. The circuit court granted the State's motion based on *res judicata*. The petitioner now appeals.

¶ 20 II. ANALYSIS

¶ 21 On appeal, the petitioner does not argue the merits of his petition, nor does he contend that dismissal of his petition was improper based on either timeliness or *res judicata*.[1] Instead, he solely contends that he did not receive reasonable assistance from his postconviction counsel. In this respect, the petitioner asserts that postconviction counsel essentially conceded the State's motion to dismiss by failing to: (1) amend his *pro se* postconviction petition; (2) file a written response to the State's motion; or (3) make any arguments during the motion to dismiss hearing. The petitioner asserts that postconviction counsel was required to either amend his *pro se* petition to adequately present his claim of error and respond to the State's motion or, in the alternative withdraw from the case, thereby allowing the petitioner to advance his claim on his own or through new counsel.

[1] Because the petitioner does not raise these contentions, nor argues the merits of his *Apprendi* claim, he has forfeited any such arguments for purposes of this appeal. *People v. Cotto*, 2016 IL 119006, ¶ 49; *People v. Bass*, 2018 IL App (1st) 152650, ¶ 10; Ill. S. Ct. R. 341(h)(7) (eff. May 25, 2018) (points not raised on appeal are forfeited).

The petitioner therefore urges this court to reverse the circuit court's dismissal order and remand for appointment of new postconviction counsel. For the following reasons, we disagree.

¶ 22 The Post-Conviction Hearing Act (Act) (725 ILCS 5/122-1 *et seq*. (West 2016)) provides a means by which a criminal defendant may challenge his conviction on the basis of a "substantial deprivation of federal or state constitutional rights." *People v. Tenner*, 175 Ill. 2d 372, 378 (1997); *People v. Haynes*, 192 Ill. 2d 437, 464 (2000); see also *People v. Lenoir*, 2021 IL App (1st) 180269, ¶ 27. A postconviction action is a collateral attack on a prior conviction and sentence, and "is not a substitute for, or an addendum to, direct appeal." *People v. Kokoraleis*, 159 Ill. 2d 325, 328 (1994); see also *Lenoir*, 2021 IL App (1st) 180269, ¶ 27. Accordingly, "[i]ssues raised and decided on direct appeal are barred by *res judicata*, and issues that could have been raised but were not are forfeited." *Lenoir*, 2021 IL App (1st) 180269, ¶ 27.

¶ 23 The Act creates a three-stage procedure for postconviction relief. *People v. Makiel*, 358 Ill. App. 3d 102, 104 (2005); see also *People v. Gaultney*, 174 Ill. 2d 410, 418 (1996). Proceedings under the Act are commenced by the filing of a petition in the circuit court that contains the allegations pertaining to the substantial denial of the petitioner's constitutional rights. *People v. Jones*, 213 Ill. 2d 498, 503 (2004). At the first stage, the circuit court must, within 90 days after the petition is filed and docketed, independently review the petition and determine whether the allegations, if taken as true, demonstrate a constitutional violation or whether they are "frivolous" or "patently without merit." 725 ILCS 5/122-2.1(a) (2) (West 2016); *People v. Perkins*, 229 Ill. 2d 34, 42 (2007).

¶ 24 If, as here, the circuit court does not dismiss the petition as frivolous or patently without merit within the first 90 days, the petition automatically advances to the second stage, where it is docketed for additional consideration. 725 ILCS 122-2.1(b) (West 2016). At the second stage, the

circuit court will appoint an attorney for the petitioner if he cannot afford one and the State is entitled to file responsive pleadings. *People v. Steward*, 406 Ill. App. 3d 82, 88 (2010).

¶ 25 During the second stage, the circuit court must determine whether the petition and any accompanying documentation make a substantial showing of a violation of constitutional rights. *People v. Edwards*, 197 Ill. 2d 239, 246 (2001). In doing so, the circuit court may not "engage in fact finding or credibility determinations," but must take all well-pleaded facts in the petition as true unless positively rebutted by the record. *People v. Domagala*, 2013 IL 113688, ¶ 35; *People v. Pendleton*, 223 Ill. 2d 458, 473 (2006); see also *People v. Towns*, 182 Ill. 2d 491, 501 (1998). If the circuit court determines that the petitioner made a substantial showing of a constitutional violation, the petition proceeds to the third stage for an evidentiary hearing. *Domagala*, 2013 IL 113688, ¶ 35; see also *Edwards*, 197 Ill. 2d at 246. Conversely, where no substantial showing is made the petition is dismissed. *Id.*

¶ 26 When, as here, counsel is appointed to represent an indigent petitioner at the second stage of postconviction proceedings, the petitioner is only entitled to a "reasonable" level of assistance. *People v. Custer*, 2019 IL 123339, ¶ 30; see also *People v. Johnson*, 2018 IL 122227, ¶ 16; *People v. Greer*, 212 Ill. 2d 192, 204 (2004). Because appointment of counsel at this stage is a matter of "legislative grace" and not a constitutionally guaranteed right, the standard is significantly lower than the "effective assistance of counsel" level required at trial. *Perkins*, 229 Ill. 2d at 42; *Custer*, 2019 IL 123339, ¶ 30.

¶ 27 Our supreme court has explained that to provide a "reasonable" level of assistance, postconviction counsel must perform specific duties as articulated by Illinois Supreme Court Rule 651(c) (Ill. S. Ct. R. 651(c) (eff. July 1, 2017)). See *Custer*, 2019 IL 123339, ¶ 32; see also *People v. Malone*, 2017 IL App (3d) 140165, ¶ 10. This rule requires that counsel: (1) consult with the

petitioner (either by mail or in person) to ascertain his contentions of deprivation of constitutional rights; (2) examine the record of the trial proceedings; and (3) make any amendments to the *pro se* petition that are necessary for an adequate representation of the petitioner's contentions. See Ill. S. Ct. R. 651(c) (eff. July 1, 2017). Fulfillment of the third obligation does not require postconviction counsel to either amend the *pro se* petition (*Malone*, 2017 IL App (3d) 140165, ¶ 10) or to "advance frivolous or spurious claims on defendant's behalf" (*Greer*, 212 Ill. 2d at 205). Indeed, "if amendments to a *pro se* postconviction petition would only further a frivolous or patently nonmeritorious claim, they are not 'necessary' within the meaning of the rule." *Greer*, 212 Ill. 2d at 205.

¶ 28 The filing of a Rule 651(c) certificate creates a rebuttable presumption that postconviction counsel provided reasonable assistance. *People v. Profit*, 2012 IL App (1st) 101307, ¶ 19. "A defendant has the burden of overcoming that presumption by demonstrating that counsel failed to substantially comply with the duties set out in Rule 651(c)." *People v. Rivera*, 2016 IL App (1st) 132573, ¶ 36.

¶ 29 We review both the dismissal of a second stage postconviction petition and the question of whether counsel provided reasonable assistance *de novo*. *People v. Wallace*, 2018 IL App (5th) 140385, ¶ 31. In doing so, we may affirm the circuit court's dismissal on any basis shown in the record. *People v. Davis*, 382 Ill. App. 3d 701, 706 (2008).

¶ 30 In the present case, after a review of the record, we find that the petitioner has failed to rebut the presumption that his postconviction counsel rendered reasonable assistance in substantial compliance with Rule 651(c) (eff. July 1, 2017).

¶ 31 The record before us reveals that after being appointed to represent the petitioner on June 2, 2017, postconviction counsel immediately requested the transcripts and records of the

petitioner's case from the clerk's office. After failing to receive those records in a timely fashion, postconviction counsel filed a successful motion for rule to show cause compelling the clerk of the circuit court to release the documents. From February 2, 2018, until June 13, 2018, counsel reviewed the records and contacted a colleague in her department, who had previous experience with *Apprendi* claims. Counsel subsequently filed a Rule 651(c) certificate, attesting that she had examined the record of the proceedings, consulted with the petitioner to ascertain his contentions of deprivation of constitutional rights, and read and researched the issues raised by his petition. Counsel then certified that she would not amend the *pro se* petition because it "adequately set[] forth the petitioner's claim."

¶ 32 On appeal, the petitioner contends that counsel's decision not to amend his petition and her subsequent failure to respond to the State's motion to dismiss rendered him with unreasonable assistance. The petitioner, however, does not explain how counsel should have amended his *pro se* petition or responded to the State's motion to dismiss to further his *Apprendi* claim. Nor can he, since he himself acknowledges that his claim was already addressed and rejected by this appellate court twice. Rather, the petitioner argues that if counsel determined that his petition lacked merit, which he presumes she did by mere failure to respond to the State's motion to dismiss, counsel had an ethical duty to withdraw. In support, the petitioner relies on *Greer*, 212 Ill. 2d 192 (2004), *People v. Kuehner*, 2015 IL 117695, ¶ 21, and *People v. Shortridge*, 2012 IL App (4th) 100663. For the following reasons, we disagree and find those case inapposite.

¶ 33 Contrary to the petitioner's position, postconviction counsel was not required to choose between amending the *pro se* petition or withdrawing as counsel. Rather, our appellate courts have repeatedly held that both options were available to her. See *e.g.*, *People v. Pace*, 386 Ill. App. 3d 1056, 1062 (2008) ("Rule 651(c) does not require counsel to amend the *pro se* petition. [Citation.]

Indeed, ethical obligations prohibit counsel from doing so if the claims are frivolous or spurious. [Citation.] The question remains what should counsel do if counsel investigates the claims but finds them without merit. The case law provides two options. One is to stand on the allegations in the *pro se* petition and inform the court of the reason the petition was not amended [Citation.] Another is to withdraw as counsel [Citation.]"); see also *People v. Dixon*, 2018 IL App (3d) 150630, ¶¶ 21-22 ("If counsel had found all the claims in the petition to be frivolous, the appropriate procedure would have been to stand on the *pro se* petition or seek to withdraw as counsel."); *People v. Bass*, 2018 IL App (1st) 152650, ¶ 20 ("whether appointed counsel elects to withdraw and inform the court of the reasons why the petition lacks merit or instead elects to stand on the *pro se* petition, the result is the same"); *Malone*, 2017 IL App (3d) 140165, ¶ 10 ("If the claims are frivolous, postconviction counsel has the option of standing on the allegations in the *pro se* petition or to withdraw as counsel.").

¶ 34 The petitioner's reliance on *Greer*, *Kuehner*, and *Shortridge* to the contrary is misplaced.

¶ 35 In *Greer*, 212 Ill. 2d at 195-96, the petitioner's appointed postconviction counsel determined that the *pro se* petition was meritless and therefore sought to withdraw as counsel. After the circuit court dismissed the petition *sua sponte*, the appellate court affirmed the circuit court's decision to grant postconviction counsel's request to withdraw but reversed the *sua sponte* dismissal. *Id.* The case proceeded to our supreme court solely on the issue of postconviction counsel's right to withdraw. *Id.* at 195-96. The supreme court held that once postconviction counsel determines that the petitioner's claims are frivolous and patently without merit, counsel is under no obligation to continue representing the petitioner. *Id.* at 209. The court also noted that if the claims are frivolous, counsel is ethically prohibited from further representing the petitioner. *Id.*

at 205.

¶ 36 Accordingly, while *Greer* authorizes withdrawal of postconviction counsel where the petition cannot be amended to state a meritorious claim, it nowhere creates a *per se* requirement that counsel must withdraw instead of complying with Rule 651(c) (eff. July 1, 2017) and standing on the *pro se* petition. See *Malone*, 2017 IL App (3d) 140165, ¶ 12 (Although *Greer* "allows postconviction counsel to withdraw when the allegations of the petition are without merit and frivolous, it does not *compel* withdrawal under such circumstances. [Citation.] Whether postconviction counsel stood on the *pro se* petition or withdrew as counsel is a distinction without a difference.")

¶ 37 The petitioner's reliance on *Kuehner*, 2015 IL 117695 is similarly misplaced. In that case our supreme court considered the duties of a postconviction counsel who attempts to withdraw after an "affirmative judicial determination that the *pro se* petition is neither frivolous nor patently without merit." *Id.* ¶ 27. The court held that where a *pro se* petition is advanced to the second stage of proceedings on an explicit finding by the circuit court that the petition is not frivolous or patently without merit, appointed postconviction counsel cannot second guess the circuit court's findings but rather must "move the process forward by cleaning up the [petitioner's] *pro se* claims and presenting them to the court for adjudication." *Id.* ¶ 21. The court further held, however, that if postconviction counsel discovers a reason that would ethically prohibit him from presenting the claims to the court, he "bears the burden of demonstrating, with respect to each of the [petitioner's] *pro se* claims, why the trial court's initial assessment was incorrect." *Id.*

¶ 38 Contrary to the petitioner's position, nothing in *Kuehner* suggests that appointed postconviction counsel has the same obligation where, as here, the *pro se* petition is automatically docketed and advanced to the second stage of postconviction proceedings without the circuit court

ever making a determination about the frivolity of the *pro se* petition. Moreover, nothing in *Kuehner* even suggests, let alone prohibits counsel from standing on the *pro se* petition if she otherwise complies with the requirements of Rule 651(c) (eff. July 1, 2017).

¶ 39 Lastly, we also reject the petitioner's reliance on *Shortridge*, 2012 IL App (4th) 100663. In that case, appointed postconviction counsel did not just fail to amend the *pro se* petition. Instead, he "confess[ed] the motion to dismiss." *Id.* ¶ 6. The appellate court held that counsel's act of "confessing the motion to dismiss," did not fall within the reasonable level of assistance guaranteed under the Act. *Id.* ¶ 15. Citing *Greer*, the court stated that "[i]f counsel, in fact, found the allegations 'nonmeritorious,' even with any necessary amendments, then he should have moved to withdraw as counsel, *not confess the State's motion to dismiss*." (Emphasis added). *Id.* ¶ 14.

¶ 40 Unlike in *Shortridge*, where postconviction counsel neither stood on the *pro se* petition nor moved to withdraw but, instead, pursued a third, impermissible alternative—confessing the State's motion to dismiss, here, postconviction counsel chose to rest on the *pro se* petition, explaining that the petition adequately set forth the petitioner's arguments. Accordingly, counsel's decision to rest on the *pro se* petition does not support the petitioner's claim of unreasonable assistance. See *Dixon*, 2018 IL App (3d) 150630, ¶¶ 21-22; see *Malone*, 2017 IL App (3d) 140165, ¶ 10; see *Pace*, 386 Ill. App. 3d at 1062.

¶ 41 III. CONCLUSION

¶ 42 For the foregoing reasons we find that the petitioner has failed to rebut the presumption that his postconviction counsel rendered reasonable assistance in substantial compliance with Rule 651(c) (eff. July 1, 2017). Accordingly, we affirm the circuit court's dismissal of the petitioner's

postconviction petition.

¶ 43 Affirmed.

120944

TO THE APPELLATE COURT OF ILLINOIS
IN THE CIRCUIT COURT OF COOK COUNTY
CRIMINAL DIVISION

PEOPLE OF THE STATE OF ILLINOIS		No.	97CR2608101
-vs-		Judge:	Carol Howard
RICHARD HUFF		Attorney:	Abigail S Clough

11-2 PC-11
00-2414
05-1769

NOTICE OF APPEAL

An Appeal is taken from the order of judgment described below:

APPELLANT'S NAME:	Richard Huff
IDOC #:	K82330
DOB:	12/1/1970
APPELLANT'S ADDRESS:	IDOC, Logan Correctional Center, Y35508
APPELLANT'S ATTORNEY:	State Appellate Defender
ADDRESS:	203 N. LaSalle, 24th FL, Chicago, IL 60601
OFFENSE:	Murder
ORIGINAL JUDGMENT:	Guilty - Jury Trial
ORIGINAL SENTENCING:	6/2/2000 (Life imprisonment)
JUDGMENT APPEALED:	Order Granting State's Motion to Dismiss Petitioner's PC Petition
JUDGMENT DATE:	11/2/2020

RECEIVED
NOV 23 2020
PARALEGAL DEPARTMENT
Office of the State Appellate Defender
1st District

Abigail S. Clough
APPELLANT'S ATTORNEY

VERIFIED PETITION FOR REPORT OF PROCEEDINGS COMMON LAW RECORD AND FOR APPOINTMENT OF COUNSEL ON APPEAL

Under Supreme Court Rules 605-608, appellant asks the Court to order the Official Court Reporter to transcribe an original and copy of the proceedings, file the original with the Clerk and deliver a copy to the appellant; order the Clerk to prepare the Record on Appeal and to Appoint Counsel on Appeal. Appellant, being duly sworn, says that at the time of his conviction he was and is unable to pay for the Record or an appeal lawyer.

ORDER

IT IS ORDERED the State Appellate Defender be appointed as counsel on appeal and the Record and Report of Proceedings be furnished appellant without cost.

ENTERED
NOV 02 2020
DOROTHY BROWN
CLERK OF CIRCUIT COURT

DATE OF TRIAL: 4/4/2000-4/7/2000
SENTENCING DATE(S): 6/2/2000
ARGUMENTS ON MOTION TO DISMISS POST CONVICTION: 11/2/2020
MOTION TO DISMISS POST CONVICTION GRANTED: 11/2/2000

DATE: November 2, 2000 ENTER: Carol Howard 1928
JUDGE

No. 128492

IN THE

SUPREME COURT OF ILLINOIS

PEOPLE OF THE STATE OF ILLINOIS, Respondent-Appellee, -vs- RICHARD HUFF, Petitioner-Appellant.	))))))))))	Appeal from the Appellate Court of Illinois, No. 1-20-1278. There on appeal from the Circuit Court of Cook County, Illinois, No. 97 CR 26081. Honorable Carol M. Howard, Judge Presiding.

NOTICE AND PROOF OF SERVICE

Mr. Kwame Raoul, Attorney General, 100 W. Randolph St., 12th Floor, Chicago, IL 60601, eserve.criminalappeals@ilag.gov;

Ms. Katherine Doersch, Chief, Criminal Appeals Division, Attorney General's Office, 100 W. Randolph St., 12th Floor, Chicago, IL 60601, katherine.doersch@ilag.gov;

Mr. Richard Huff, Register No. K82330, Menard Correctional Center, P.O. Box 1000, Menard, IL 62259

Under penalties as provided by law pursuant to Section 1-109 of the Code of Civil Procedure, the undersigned certifies that the statements set forth in this instrument are true and correct. On February 22, 2023, the Brief and Argument was filed with the Clerk of the Supreme Court of Illinois using the court's electronic filing system in the above-entitled cause. Upon acceptance of the filing from this Court, persons named above with identified email addresses will be served using the court's electronic filing system and one copy is being mailed to the petitioner-appellant in an envelope deposited in a U.S. mail box in Chicago, Illinois, with proper postage prepaid. Additionally, upon its acceptance by the court's electronic filing system, the undersigned will send 13 copies of the Brief and Argument to the Clerk of the above Court.

/s/Rebecca S. Kolar
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