No. 132067

IN THE
SUPREME COURT OF ILLINOIS

PEOPLE OF THE STATE OF ILLINOIS,	)	Appeal from the Appellate Court of Illinois, First District, No. 1-23-0583
Respondent-Appellee,	)	
v.	)	There on Appeal from the Circuit Court of Cook County, Illinois, No. 95 CR 28516
MELVIN HAMMOND,	)	The Honorable Geraldine D'Souza,
Petitioner-Appellant.	)	Judge Presiding.

BRIEF OF RESPONDENT-APPELLEE
PEOPLE OF THE STATE OF ILLINOIS

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ORAL ARGUMENT REQUESTED

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POINTS & AUTHORITIES

NATURE OF THE ACTION

Petitioner appeals from the appellate court's judgment affirming the dismissal of his postconviction petition at the second stage, C829; R186-88, and finding that postconviction counsel provided reasonable assistance, A7-39.[1] This appeal raises a claim concerning the sufficiency of the postconviction pleadings.

ISSUE PRESENTED FOR REVIEW

Postconviction counsel filed a Supreme Court Rule 651(c) certificate, C800, which established a presumption that counsel "made any amendments to the petitions filed *pro se* that are necessary for an adequate presentation of petitioner's contentions," Ill. S. Ct. R. 651(c); *see People v. Urzua*, 2023 IL 127789, ¶ 62.

The issue presented is whether petitioner failed to rebut that presumption when he neither offered evidence that counsel did not fulfill that requirement (other than the allegedly deficient petition itself), nor showed that the amendments that petitioner faults counsel for not making were necessary to adequately present his contentions.

[1] "C" denotes the common law record; "SUP C" the supplement to the common law record; "R" the report of proceedings; "SUP R" the first volume of supplemental report of proceedings, contained within the supplement to the common law record; "SUP R __ V2" the second volume of supplemental report of proceedings, contained within the supplement to the report of proceedings; "Pet. Br." petitioner's opening brief; and "A" petitioner's appendix.

JURISDICTION

Jurisdiction lies under Supreme Court Rules 315(a) and 604(a). This Court allowed petitioner's petition for leave to appeal on September 24, 2025.

STATUTE AND RULE INVOLVED

725 ILCS 5/122-2. Contents of Petition.

> The petition shall . . . clearly set forth the respects in which petitioner's constitutional rights were violated. The petition shall have attached thereto affidavits, records, or other evidence supporting its allegations or shall state why the same are not attached. . . . Argument and citations and discussion of authorities shall be omitted from the petition.

Supreme Court Rule 651(c).

* * *

> The record . . . shall contain a showing, which may be made by the certificate of petitioner's attorney, that the attorney has consulted with petitioner by phone, mail, electronic means or in person to ascertain his or her contentions of deprivation of constitutional rights, has examined the record of the proceedings at trial, and has made any amendments to the petitions filed *pro se* that are necessary for an adequate presentation of petitioner's contentions.

STATEMENT OF FACTS

I. Petitioner Was Convicted of Murdering His Girlfriend's 13-Month-Old Daughter, Diamond, and Sentenced to 75 Years.

In September 1995, petitioner and his girlfriend, Michelle Tate, were jointly charged with the first degree murder of Tate's 13-month-old daughter, Diamond. C90-97, 103.

A. Before trial, the defense considered presenting an expert to dispute the autopsy finding that Diamond suffered a skull fracture.

Initially, the prosecution planned to call Dr. Kim,[2] the forensic pathologist who performed Diamond's autopsy, SUP R 1545 V2, to testify regarding the cause of Diamond's death, SUP R 2259-60 V2. Dr. Kim's report (which does not appear in the record) stated his conclusion that, among her injuries, Diamond had sustained a skull fracture. SUP R 1127.

The defense contended that Dr. Kim had misidentified normal suture marks on Diamond's skull as a fracture, and defense counsel prepared a motion *in limine* to qualify a Ph.D. candidate in forensic anthropology, Kim Reilly, as an expert witness to contest that point. *Id.*; *see also* C191-93. Defense counsel explained that Reilly would testify solely regarding "whether [ ] Dr. Kim mistook suture lines of a skull for a skull fracture," but would not opine upon the cause of death because "[p]hysical anthropologists know nothing about causes of death or beating [or] . . . hemorrhaging or anything else like that." SUP R 1127.

But prosecutors encountered "difficulties" obtaining Dr. Kim's testimony, so they called another expert, Dr. Nancy Jones from the Cook County Medical Examiner's Office, to render her own opinions based on the autopsy report. SUP R 1139. Because Jones believed that the mark on

[2] Dr. Kim's first name appears only once in the record, as "Yon." SUP R 1171.

Diamond's skull was not a skull fracture, defense counsel determined that Reilly's testimony on that point was unnecessary and did not call her. *Id.*

B. A juror acquainted with a police witness was seated without objection.

When petitioner's trial began, prospective juror Heidi Lieak stated during *voir dire* that she worked in safety and security at a hospital, where she employed off-duty police officers and had once met one of the prosecution's police witnesses. SUP R 1361-65 V2. The circuit court asked if she would be able to consider that witness's testimony the same as that of any other witness, and Lieak agreed that she would. *Id.* Asked if there was anything about her relationship with police officers generally that would cause her "to be less than impartial in this case," Lieak said there was not. *Id.* Defense counsel neither objected to seating Lieak nor used a peremptory challenge, and the record contains no further discussion of Lieak's acquaintance with the police witness or any other officers before she was sworn as a juror. *See* SUP R 1171; SUP R 1361-76 V2.

C. At trial, the prosecution presented evidence that Diamond died from blunt trauma and that petitioner admitted hitting her within hours of her death.

At trial, the prosecution presented evidence showing that at about 9:00 a.m. one September morning in 1995, police responding to a 911 call from petitioner's apartment arrived to find Diamond not breathing and nonresponsive. SUP R 1420-23 V2. She was taken to the hospital, but doctors were unable to revive her, and she was pronounced dead at 9:21 a.m. SUP R 1448, 1465 V2.

The emergency room physician observed multiple injuries on Diamond's body. SUP R 1457-58 V2. Injuries to her head included bruises and swelling on her forehead, scabs and bruises on the back of her scalp, bruising and a deep abrasion on her left cheek, and abrasions on her right cheek and ear. SUP R 1458-59 V2. The doctor further observed discoloration around Diamond's wrists that indicated they had been bound; substantial bruising to the front of her pelvic area and lower abdomen; swelling and bruising on her left thigh; scabs and wounds on her buttocks and legs; and bruising, swelling, and a deep abrasion to the external vaginal area and labia. *Id.* Diamond's diaper contained dried blood, *id.*, and she had fresh blood in her vulva and pelvic area, SUP R 1470 V2. The doctor concluded that these injuries were caused by someone hitting Diamond. SUP R 1469 V2.

In petitioner's apartment, police found a white sock and a belt with bloodstains matching Diamond's DNA, as well as shoestrings and a car seat cover with bloodstains matching DNA from both Diamond and petitioner. SUP R 1589-91 V2.

1. Petitioner admitted that he struck Diamond hours before she died.

Police interviewed petitioner and Tate about the events leading up to Diamond's death. SUP R 1433 V2. According to petitioner's written statement, which he signed on each page and initialed where he made corrections, SUP R 1623-24 V2, Tate and Diamond had been living in his apartment for about five months, SUP R 1619 V2. When they first moved in, petitioner and Tate agreed that Tate would be the one to "whoop" Diamond by "hit[ting] Diamond on the legs, arms and butt," which they believed "was a good way to discipline the girl." SUP R 1620 V2. But after a month and a half, they agreed they "would both whoop Diamond." *Id.*

Petitioner would "whoop" Diamond about eight times a month by removing her diaper and "hit[ting] her on the butt with [his] hands" for "about two or three minutes" as discipline for "crying, taking her diaper off, and jumping off the bed." *Id.* About a month later, Tate began using a belt to hit Diamond on the legs and bottom about two or three times a week because "her hand did not work anymore." SUP R 1620-21 V2. The belt left cuts on Diamond's body, which would reopen and bleed when petitioner later struck Diamond with his hand. SUP R 1621 V2.

The day Diamond died, petitioner returned home around 1:30 a.m. *Id.* Diamond was in petitioner's and Tate's bedroom in the car seat where she usually slept. *Id.* Petitioner tried to go to sleep but was kept awake by Diamond's crying, so he took her out of the car seat, pulled her diaper off, and "whooped her." SUP R 1621-22 V2. He thought that when he returned Diamond to the car seat, she hit her head on the back of the seat. SUP R 1622 V2. Petitioner went back to bed but could hear Diamond "talking and crying and mumbling." *Id.* Tate told petitioner to take Diamond to the living room, so he carried the car seat to the living room and went back to bed. *Id.* But Diamond's "talking, crying, and mumbling" from the living room continued to prevent petitioner from sleeping. *Id.*

Tate said she was going to "whoop" the baby, and Tate and petitioner went into the living room. *Id.* When petitioner took Diamond out of the car seat and put her on the floor, she hit her head. SUP R 1623 V2. He took off Diamond's diaper and "whooped" her again, then went back to bed and fell asleep. *Id.* At some point, petitioner tied Diamond's wrists to the car seat so she would not scratch her face. *Id.* When petitioner woke up at 8:15 a.m., he noticed something was wrong with the baby, and Tate called 911. *Id.*

2. The forensic expert testified that Diamond died from multiple injuries due to blunt trauma.

Dr. Jones testified that Diamond's autopsy report showed "multiple blunt trauma injuries of varying ages and also of varying types which were distributed over basically the entire surface of [Diamond's] body," SUP R 1487 V2, including her head, SUP R 1487-89. Some injuries were new or very recent; others were healing; and scarring indicated several older, repeat injuries. SUP R 1487 V2. Jones recounted the report's descriptions of Diamond's injuries and confirmed their accuracy by reviewing the autopsy photographs. SUP R 1487-96 V2.

The internal examination of Diamond's head revealed "significant injuries," including seven separate areas of bleeding under the scalp's surface that indicated blunt trauma to the head. SUP R 1497 V2. The examination showed more bleeding between the brain and the skull, as well as "bruises on the surface of the brain itself," which was "very, very swollen." SUP R 1497-98 V2. Dr. Jones explained that as Diamond's brain swelled from the blunt trauma, she lapsed into a coma, and the compression of her brain stem eventually stopped her breathing. SUP R 1508-09 V2.

The swelling also caused a "[diastatic] fracture"[3] in Diamond's skull. SUP R 1501-02 V2. Dr. Jones explained that a diastatic fracture is not the same as a skull fracture. SUP R 1513 V2. The skulls of babies and children "are not fused like the adult skull," but rather have "sutures where the bones grow together." SUP R 1501-02 V2. Jones explained:

> [A]s the brain swells and it starts putting pressure on the inside of the head, those sutures which are normally interdigitated like teeth will begin to separate from one another, and the separation of the sutures is called a [diastatic] fracture.
>
> It doesn't mean the bone is broken. It means that the bones have separated from one another, and it's a reflection that the brain has swollen and that there is increased intracranial pressure.
>
> Now, Diamond, like some other individuals, has what are called accessory sutures[,] that means she has a few additional sutures at the base of her head. And what has happened is as her brain has swollen and put pressure on the skull, these accessory sutures have separated a little bit, so she does have some [diastatic] fractures on the base of her skull.

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[3] Rather than "diasteal fracture," as the court reporter transcribed it, Jones likely instead said "*diastatic* fracture," which "a separation of the cranial sutures." *See* https://my.clevelandclinic.org/health/diseases/skull-fracture (last visited June 10, 2026).

SUP R 1502 V2. Accordingly, Jones disagreed with Dr. Kim's conclusion in the autopsy report that Diamond had a skull fracture. SUP R 1513 V2. Although Kim had described "a fracture or break in the bone," Jones explained that "the skull actually [wa]sn't damaged." SUP R 1519 V2. Rather, "there [we]re [diastatic] fractures, but not a broken bone," which are "different things." SUP R 1513 V2.

Dr. Jones concluded that Diamond's injuries were consistent with multiple blows to the head, and inconsistent with an infant banging her head against the back of a plastic car seat. SUP R 1503 V2. Based on the evidence of acute, recent injuries to Diamond's head, as well as to her pelvic area and buttocks, Jones opined that Diamond died from multiple injuries due to blunt trauma; in other words, she was beaten to death. SUP R 1511-12 V2.

Dr. Jones considered the body's "inflammatory reaction" — *i.e.*, the presence of white blood cells in blood and tissue that appear about six hours after an injury — to determine the approximate timing of Diamond's fatal injuries. SUP R 1504-06 V2. She estimated that they occurred between one hour and six hours before her death "because there [was] so little inflammation," which indicated "that Diamond didn't survive long enough for her body to react" by producing white blood cells. SUP R 1522 V2. Although Jones could not rule out the possibility that the injuries occurred more than six hours before death, she believed the evidence pointed to "less than six hours." SUP R 1523 V2.

D. Petitioner testified that he had only spanked Diamond to soothe her.

Petitioner testified that he first saw Tate spank Diamond with a belt a couple of weeks after she moved in, and he told her not to do it again. SUP R 1779-82 V2. A few weeks later, he was upset when he again saw Tate using a belt to spank Diamond. SUP R 1782-90 V2. Over the following months, petitioner saw other signs that Tate abused and neglected Diamond. SUP R 1790-93, 1798 V2.

Petitioner claimed that on the day Diamond died, he had arrived home around 3:00 a.m. to find Diamond in her car seat in the bedroom. SUP R 1805-08 V2. Diamond was fussing, and Tate said she put her in the car seat because she would not sleep. SUP R 1809 V2. Petitioner went to bed and, when Diamond continued crying, Tate had him put her in the front room. SUP R 1816-17 V2. Diamond kept crying, so petitioner and Tate went to the front room, where petitioner took Diamond out of her car seat, laid her on the floor, and checked her diaper. SUP R 1818-20 V2. Petitioner then "spanked her on the butt a little bit" to "soothe" and "comfort" her, put her back in the car seat, and went back to bed, where he fell asleep. SUP R 1820-21 V2. At some point, he woke up to Tate returning from the bathroom; she said Diamond was still awake. SUP R 1821-22 V2. Tate woke petitioner again around 8:00 a.m. SUP R 1823, 1878 V2. He thought Diamond was awake, too, because her eyes were "kind of open," SUP R 1823 V2, but he told Tate to call 911 because something seemed wrong, SUP R 1878 V2.

Petitioner denied that he and Tate had agreed that hitting Diamond was a good way to discipline her. SUP R 1849-50 V2. Petitioner admitted that he spanked Diamond in the early morning hours before she died, SUP R 1861 V2, and that he did not see Tate hit Diamond after he came home that night, SUP R 1870-71 V2. Petitioner also presented the testimony of six friends and relatives, who testified that petitioner had a reputation for being a peaceful, nonviolent person and a good caregiver. SUP R 1700-01, 1706-08, 1715, 1733, 1745-46, 1757-58 V2.

E. Petitioner was convicted, and his 75-year sentence was affirmed on direct appeal.

The jury found petitioner guilty of first degree murder, SUP R 1964-66 V2; SUP C 498, and the circuit court sentenced him to life in prison, SUP R 2080 V2; C312-13. After the appellate court vacated that sentence and remanded for resentencing, C374-76, the circuit court imposed a term of 75 years, SUP R 2487 V2; C508, which was affirmed on appeal, C513-34.

II. Petitioner's Postconviction Petition Was Dismissed as Meritless.

In July 2007, petitioner filed a *pro se* postconviction petition. C535-50. The circuit court failed to act on the petition within 90 days, so it advanced automatically to the second stage, and the court appointed counsel. C553-54; SUP R 756, 769-74. In December 2009, counsel filed a Rule 651(c) certificate and moved to withdraw under *People v. Greer*, 212 Ill. 2d 192 (2004). C555-62.

In her motion, counsel explained why petitioner's claims lacked merit. *See* C556-60. Specifically, in response to his *pro se* claim that trial counsel was ineffective for not "call[ing] and us[ing] their own medical expert witness to challenge the state[']s expert witness opinion as to cause of death and when (timeframe) injuries that caused death and other injuries [were] inflicted," C540, counsel explained that the record showed that trial counsel had decided not to call the defense expert (Reilly) after her testimony (relevant to rebut Dr. Kim's conclusion that Diamond had a skull fracture) was rendered unnecessary by the prosecution's decision to call Dr. Jones instead, who opined that Dr. Kim was wrong on that point, C557. In January 2010, petitioner filed a supplement to his petition in response to counsel's motion. C564-80. The circuit court allowed counsel to withdraw, then dismissed both the initial and supplemental *pro se* petitions. C582; SUP R 812-26.

A. The appellate court reversed the initial dismissal of petitioner's postconviction petition and remanded for compliance with Rule 651(c).

The appellate court reversed and remanded for compliance with Rule 651(c). *People v. Hammond*, 2012 IL App (1st) 101096-U, ¶¶ 22-26. Without addressing the petition's merits, the appellate court held that counsel's motion to withdraw was deficient because it "did not address [petitioner's] claim that trial counsel was ineffective for not calling a medical expert to testify as to the time frame in which Diamond's fatal injuries were inflicted." *Id.* ¶ 22. Because the appellate court read petitioner's *pro se* claim to present this issue that postconviction counsel's motion did not address, the court held that counsel had "failed to ascertain [petitioner's] claim of ineffectiveness based on trial counsel's failure to call a medical expert to testify as to the time frame in which Diamond's fatal injuries occurred." *Id.* ¶ 25. The appellate court thus held that the record rebutted the presumption of compliance with Rule 651(c) created by postconviction counsel's certificate. *Id.* ¶ 26.[4]

B. After several years of continuances, petitioner's counsel filed a Rule 651(c) certificate and an amended petition, which the circuit court dismissed.

Following remand, petitioner filed a "revised" *pro se* petition in August 2013, repeating the claims from his 2007 and 2010 *pro se* filings and adding still more claims. C608-80. The circuit court appointed new postconviction counsel, and in August 2014, counsel filed a Rule 651(c) certificate referencing the 2007 and 2013 *pro se* filings and rested on those petitions. *See* R7-25; C687. The People moved to dismiss the petitions, C689-99, but the parties later realized that the Rule 651(c) certificate did not address whether counsel had reviewed the 2010 *pro se* supplement, R61-64. In July 2016, postconviction counsel agreed to file a comprehensive amended petition

[4] The appellate court issued its decision before this Court's decision in *People v. Frey*, 2024 IL 128644, where the Court held that, when a *pro se* claim is ambiguous and postconviction counsel certifies that she consulted with the petitioner to ascertain his claims and also addresses in her motion to withdraw why the ambiguous claim, as reasonably interpreted, is meritless, then counsel has complied with Rule 651(c). *Id.* ¶¶ 30-32.

"to address all issues raised by prior petitions," and the People withdrew their motion to dismiss. R66-68.

When counsel attempted to consult with petitioner regarding his three *pro se* filings, however, petitioner refused to accept counsel's calls or answer counsel's letters. R77. Petitioner appeared in court in April 2017, and his counsel reported that petitioner had expressed a desire to proceed *pro se*, but petitioner stated that he trusted counsel's judgment. R84-86. For the next year, counsel sought additional continuances to prepare and file the comprehensive amended petition but before she could do so, a new assistant public defender assumed petitioner's representation in September 2018, *see* R88-111, and requested continuances to review the record through December 2020, *see* R110-42. In February 2021, a third assistant public defender appeared, *see* R147-48, and requested further continuances, *see* R148-66.

Petitioner filed yet another *pro se* supplement to his petition in April 2022. *See* C775-81. Soon after, postconviction counsel filed an amended petition, which summarized petitioner's 37 claims and incorporated the factual allegations from all four *pro se* filings, C789-96; a verification certifying the petition, C797-99; and a certification that counsel had examined the trial and appellate record, consulted by mail and phone with petitioner to ascertain his contentions of error, and prepared an amended petition "which, along with petitioner's previously filed *pro se* petitions . . . adequately set forth the petitioner's claims," C800. The People moved to dismiss the amended petition, arguing that the claims were meritless because they were unsupported either by the trial record or affidavit, and/or procedurally barred. *See* C801-24.

At the hearing on the motion, the People argued that several of petitioner's allegations of ineffective assistance of trial counsel were barred because they were based on matters of record and thus could have been brought on direct appeal. R184. With respect to petitioner's claim that trial counsel should have called "an expert," the People argued that petitioner had not attached anything to establish that another expert would have opined differently than Dr. Jones. *Id.* In response, postconviction counsel explained that he "filed an amended petition . . . attempting to consolidate all [petitioner's] claims into one document, and also adopting any previous claims he made in those four petitions," then he rested on the claims as presented in the *pro se* and amended petitions. R185-86. Counsel also argued that petitioner had cured any waiver of his claims based on the trial record by arguing ineffective assistance of appellate counsel. R186.

The circuit court granted the motion to dismiss, holding that petitioner's "laundry list of allegations against trial counsel" failed to meet the standard set forth in *Strickland v. Washington*, 466 U.S. 668 (1984). R187. The court found both that trial counsel's decisions — including the decision not to "call an additional expert to contradict Dr. Kim" — "were matters of trial strategy," and that petitioner had failed to show that he was prejudiced by those decisions. *Id.* The court also held that petitioner's claims of ineffective assistance of appellate counsel were meritless. *Id.* Finally, the court held that the seating of juror Lieak did not violate due process because she "was questioned and stated [she] would be fair," and that trial counsel was not ineffective for not using a peremptory challenge on Lieak because counsel made a reasonable decision as "a matter of trial strategy." *Id.* The court dismissed the amended petition without a written opinion. C829; R188.

C. The appellate court affirmed, holding that postconviction counsel provided reasonable assistance.

On appeal, petitioner argued that the circuit court erred by dismissing his amended petition because he made a substantial showing that appellate counsel was ineffective for not arguing trial counsel's ineffectiveness in various respects during closing arguments. *See* A25 ¶ 62. Petitioner also argued, as relevant here, that postconviction counsel provided unreasonable assistance by not attaching evidence in support of certain claims and not alleging prejudice. A26 ¶ 63.[5]

The appellate court affirmed, agreeing with the circuit court that petitioner's ineffective-assistance claims were meritless, A26-34 ¶¶ 64-93, and holding that postconviction counsel provided reasonable assistance, A34-38 ¶¶ 94-111. As to petitioner's contention that postconviction counsel failed

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[5] Petitioner also argued on appeal that postconviction counsel provided unreasonable assistance by not amending the petition to overcome waiver. *See* A26, 36-37 ¶¶ 63, 101-06. Petitioner did not raise this issue in his PLA or in his opening brief before this Court.

to attach evidence to support certain claims, the appellate court cited *People v. Wallace*, 2016 IL App (1st) 142758, ¶ 27, which in turn relied on *People v. Johnson*, 154 Ill. 2d 227, 241 (1993), for the proposition that "the reviewing court may reasonably presume that postconviction counsel made a good faith effort to obtain evidence supporting the postconviction claims but was unable to do so." A36 ¶ 100. Accordingly, the appellate court presumed that postconviction counsel here "made a good faith effort to obtain this supporting evidence but was unable to do so," and so did not provide unreasonable assistance by failing to attach evidence. *Id.*

The appellate court also held that petitioner's *pro se* filings — which counsel incorporated into the amended petition — adequately alleged *Strickland*'s prejudice element, even if counsel did not use the word "prejudice" when summarizing certain claims in the amended petition. A38 ¶ 110. Postconviction counsel thus did not fail to allege a claim's essential element and thereby fail to provide reasonable assistance. *Id.* ¶¶ 110-11.

STANDARDS OF REVIEW

The Court reviews *de novo* both the scope of postconviction counsel's duties under Rule 651(c) and counsel's compliance with that rule. *People v. Frey*, 2024 IL 128644, ¶ 21. The Court likewise reviews questions regarding the interpretation of its rules *de novo*. *People v. Huff*, 2024 IL 128492, ¶ 13.

ARGUMENT

Petitioner Failed to Rebut the Presumption That Postconviction Counsel Provided Reasonable Assistance.

The appellate court correctly held that postconviction counsel satisfied Rule 651(c) and provided reasonable assistance. A34-38, ¶¶ 94-114. As petitioner concedes, counsel filed a valid Rule 651(c) certificate. Pet. Br. 18. Thus, the appellate court was to presume that counsel "made any amendments to the petitions filed *pro se* that [we]re necessary for an adequate presentation of petitioner's contentions," *People v. Urzua*, 2023 IL 127789, ¶ 62 (citing Ill. S. Ct. R. 651(c)), and it was petitioner's burden to rebut that presumption with evidence from the record that counsel did not perform his Rule 651(c) duty to amend, *see id.* ¶ 54 (Rule 651(c) certificate creates rebuttable presumption that counsel provided reasonable assistance, "absent an affirmative showing in the record"); *Huff*, 2024 IL 128492, ¶ 23 (petitioner bears burden of rebutting presumption). Petitioner failed to rebut that presumption here.

Petitioner identified nothing in the record indicating that postconviction counsel did not comply with Rule 651(c), and petitioner's reliance on the amended petition's alleged deficiencies alone was insufficient to rebut the presumption of compliance. Moreover, the amendments that petitioner faults counsel for not making were not "necessary" to adequately present petitioner's claims within Rule 651(c)'s meaning. Rather, the amendments are either presumptively unavailable or legally irrelevant to his claims and were therefore not necessary for the claims' adequate presentation. Finally, postconviction counsel did not violate his ethical obligations by adopting and resting on petitioner's meritless claims rather than withdrawing on the ground that the claims were not merely meritless but frivolous.

A. Postconviction counsel's Rule 651(c) certificate created a presumption that counsel made any necessary amendments to present petitioner's claims.

Postconviction counsel certified that he prepared an amended petition that, together with petitioner's *pro se* petitions, adequately presented petitioner's contentions. C800. Therefore, any amendments that counsel did not make were presumptively unnecessary under Rule 651(c).

The limits of necessity under Rule 651(c) are dictated by the nature of postconviction counsel's role under the Post-Conviction Hearing Act, 725 ILCS 5/122-1 *et seq.* The Act provides a three-stage process for adjudicating claims for postconviction relief. *People v. Williams*, 2025 IL 129718, ¶ 42. At the first stage, the circuit court reviews the petition to decide whether it raises any claim that is not frivolous or patently without merit. *Frey*, 2024 IL 128644, ¶ 22 (citing 725 ILCS 5/122-2.1(a)(2)). If the petition raises at least one arguable claim of constitutional deprivation (or if, as here, the circuit court fails to rule on the petition within 90 days), then it advances. *Id.*

At the second stage, the circuit court appoints counsel to assist an indigent petitioner who so requests. *People v. Cotto*, 2016 IL 119006, ¶ 27. The Act entitles petitioners only to the reasonable assistance of postconviction counsel — a lower standard of performance than the state and federal constitutions guarantee at trial and on direct appeal. *Williams*, 2025 IL 129718, ¶ 43; *Frey*, 2024 IL 128644, ¶ 23; *Cotto*, 2016 IL 119006, ¶ 29. And Rule 651(c) functions as a "vehicle for ensuring a reasonable level of assistance" in second-stage postconviction proceedings, *Cotto*, 2016 IL 119006, ¶ 41 (internal citations and quotations omitted), by "delineat[ing] specific duties that postconviction counsel must undertake" at that stage, *Huff*, 2024 IL 128492, ¶ 22 (citing *People v. Suarez*, 224 Ill. 2d 37, 42 (2007)).

"Commensurate with the lower reasonable assistance standard," Rule 651(c) "sharply limits the requisite duties of postconviction counsel" by requiring only that counsel "'consult[s] with the petitioner,' . . . 'examine[s] the record' as needed to shape the defendant's *pro se* claims, and 'ma[kes] any amendments to the petitions filed *pro se* that are necessary for an adequate presentation' of those claims." *People v. Custer*, 2019 IL 123339, ¶ 32 (quoting Ill. S. Ct. R. 651(c)). Rule 651(c) further requires counsel to make a record of having "complied with each of the requirements of that rule," *People v. Perkins*, 229 Ill. 2d 34, 50 (2007), by certifying that counsel has performed the three necessary tasks, Ill. S. Ct. R. 651(c). "Counsel's certification that he or she complied with those duties creates a rebuttable presumption that counsel provided the petitioner with a reasonable level of assistance, absent an affirmative showing in the record." *Urzua*, 2023 IL 127789, ¶ 54.

Given the limited nature of counsel's role at the second stage, an amendment is not "necessary" to adequately present the petitioner's postconviction claim within Rule 651(c)'s meaning unless it is essential to shaping the claim into proper legal form. *See Perkins*, 229 Ill. 2d at 44 ("purpose of Rule 651(c) is to ensure that counsel shapes the petitioner's claims into proper legal form"); *see also* Necessary, Black's Law Dictionary (12th ed. 2024) ("That is needed for some purpose or reason; essential."). In other words, an amendment is not necessary if a claim is already presented in proper legal form. Nor is an amendment necessary if it does nothing to advance a claim, for an amendment cannot be necessary if it is legally irrelevant. Finally, amendments that would "'only further a frivolous or patently nonmeritorious claim . . . are not "necessary"' under Rule 651(c). *Huff*, 2024 IL 128492, ¶ 22 (quoting *People v. Greer*, 212 Ill. 2d 192, 205 (2004)). Thus, counsel's Rule 651(c) obligation to amend a petition to adequately present a petitioner's claims is limited to amendments that are legally essential to present nonfrivolous claims.

Because the adequate presentation of a petitioner's claim is limited to shaping the claim into proper legal form, counsel's duty to amend does not require that counsel do the impossible and muster factual support for a claim when such support is unavailable. Counsel's Rule 651(c) "duty . . . to present a constitutional claim adequately under the Act" includes making amendments to meet the Act's procedural and pleading requirements, where possible, which means that counsel must attach supporting affidavits or other evidence only if such support is available. *Perkins*, 229 Ill. 2d at 44 (citing *People v. Turner*, 187 Ill. 2d 406, 412-14 (1999), and *People v. Johnson*, 154 Ill. 2d 227, 247 (1993)). But counsel's duty to make such amendments depends on the *availability* of supporting facts. *See id.* ("Rule 651(c)'s mandate of any amendments necessary for an adequate presentation of a petitioner's contentions requires counsel to allege *available facts*" to shape claims into proper legal form); *see also id.* at 47 ("plain language of the rule also requires amending a petition to allege *available facts*" to present claim); *id.* at 48 (counsel's assistance "includes amending petition to allege any *available facts*" necessary to meet the Act's requirements); *id.* at 49 (Rule 651(c) requires counsel to amend petition "to allege any *available facts* necessary" to support claim) (emphases added). In other words, if counsel cannot find the evidence necessary to shape a claim into proper legal form, then counsel is not obligated to do the impossible and attach unavailable supporting evidence.

Accordingly, when counsel certifies compliance with Rule 651(c), counsel represents that counsel made all necessary amendments that can be made based on the available facts or evidence. *See Perkins*, 229 Ill. 2d at 50-51 (counsel filed Rule 651(c) certificate, so counsel presumptively complied with Rule 651(c) by making all necessary amendments; although petition failed to plead facts to meet the Act's timeliness requirement, those facts were presumptively unavailable and amendment thus unnecessary); *see also Huff*, 2024 IL 128492, ¶¶ 24-25 (where no amendments were made, "[c]ounsel's Rule 651(c) certificate created the presumption that no amendments were available"). If a claim remains meritless after counsel certifies compliance with Rule 651(c), whether due to the legal insufficiency of the allegations or a lack of supporting affidavits or other evidence, then the court presumes — absent evidence in the record to the contrary — that counsel could not amend the claim to survive dismissal because the facts necessary for such amendment were not available to counsel despite counsel's best efforts. *See Huff*, 2024 IL 128492, ¶¶ 24-25; *Perkins*, 229 Ill. 2d at 50-51.

In sum, an amendment is "necessary" under Rule 651(c) only if it is (1) to a nonfrivolous claim, (2) legally essential to shape the claim in the proper legal form, and (3) factually available. Accordingly, when postconviction counsel certifies that counsel has made all necessary amendments, counsel certifies that any amendments *not* made were not necessary to adequately present the petitioner's claims. *See Huff*, 2024 IL 128492, ¶ 24 ("It is presumed from the lack of an amendment that there were none to be made."). Counsel's certificate creates a rebuttable presumption that any amendments counsel did not make to the petition were (1) to a frivolous claim, (2) legally irrelevant, or (3) factually unavailable.

Postconviction counsel's certificate here established that presumption. As petitioner acknowledges, counsel filed a valid Rule 651(c) certificate. Pet.

Br. 18. Counsel certified that he complied with Rule 651(c)'s three requirements, including that he "prepared an amended petition for post-conviction relief, which, along with petitioner's previously filed *pro se* petitions for post-conviction relief, adequately set forth the petitioner's claims of deprivations of his constitutional rights." C800. Accordingly, this Court presumes that counsel "made any amendments to the petitions filed *pro se* that are necessary for an adequate presentation of petitioner's contentions." *Urzua*, 2023 IL 127789, ¶ 62 (citing Ill. S. Ct. R. 651(c)). And any amendments that counsel did not make were presumptively *un*necessary — absent evidence in the record to the contrary — because such amendments were either factually unavailable or otherwise not essential to shape any nonfrivolous claims into the proper legal form. *See Huff*, 2024 IL 128492, ¶¶ 24-25; *Perkins*, 229 Ill. 2d at 50-51.

B. Petitioner failed to rebut the presumption that postconviction counsel made all amendments necessary to adequately present petitioner's contentions.

Petitioner failed to rebut the presumption created by postconviction counsel's Rule 651(c) certificate that counsel provided reasonable assistance by amending the petition as necessary to adequately present petitioner's claims. Petitioner first complains that postconviction counsel did not attach evidence to support five of petitioner's claims:

> Trial counsel was ineffective for failing to use a defense expert to challenge cause of death and estimated time of injuries that caused the death of the victim. Appellate counsel was ineffective for not raising the issue on appeal. [C791.]

> Trial counsel was ineffective for failure to investigate and interview pathologist, Dr. Kim, who performed the autopsy, where Dr. Kim's testimony could have challenged the State's expert, Dr. Nancy Jones, as to cause of death and the time injuries were inflicted on the victim. [C793.]
>
> Trial counsel was ineffective for failing to file a motion *in limine* to admit hearsay letters authored by Co-defendant Tate to Petitioner while both Petitioner and Tate were incarcerated pre-trial in the Cook County Jail and a police report authored by State witness Chief Crull. [C794.]
>
> Trial counsel was ineffective for selecting a woman juror who during *voir dire* admitted to knowing [a] State witness, Officer Barber, and to hiring members of the Burnham Police Department for security at the hospital where the juror worked. [C793.]
>
> Appellate counsel was ineffective for failing to argue on direct appeal that the trial court erred in not striking a juror after the juror admitted to knowing a State witness, Officer Barber, during *voir dire*. [C794.]

See Pet. Br. 20-42. Petitioner further contends that counsel failed to amend the petition to allege that petitioner was prejudiced by the trial and appellate counsels' alleged failures. *Id.* at 42-44. But petitioner fails to point to anything in the record — other than the allegedly deficient amended petition — showing that counsel did not comply with Rule 651(c) or otherwise provided unreasonable assistance. Moreover, petitioner's proposed amendments are not necessary under Rule 651(c) because they are either presumptively unavailable or irrelevant to advancing his claims.

1. Petitioner identified no evidence in the record to rebut the presumption that counsel provided reasonable assistance.

The only evidence in the record that petitioner offers to rebut the presumption that postconviction counsel complied with Rule 651(c) — the allegedly deficient petition itself — is insufficient as a matter of law.

When counsel certifies compliance with Rule 651(c), this Court presumes that any deficiencies in the amended petition were beyond counsel's ability to cure *despite* counsel's compliance with Rule 651(c). *See Williams*, 2025 IL 129718, ¶¶ 44-49 (rejecting argument that postconviction counsel failed to amend petition to adequately present claim where nothing in record showed any additional facts that counsel could have pleaded).[6] This presumption extends to deficiencies with respect to pleading requirements, such as a lack of factual allegations to establish the petition's timeliness, *see Perkins*, 229 Ill. 2d at 50-51 (lack of factual allegations to prevent dismissal as untimely did not rebut presumption that counsel made all necessary amendments where nothing in record showed counsel failed to plead available facts; rather, a Rule 651(c) certificate creates presumption that counsel made best available argument, even if deficient), and the lack of affidavits or other evidence to support claims based on factual allegations outside the trial record, *see Johnson*, 154 Ill. 2d at 241 ("In the ordinary case,

[6] Although postconviction counsel in *Williams* was privately retained, counsel filed a Rule 651(c) certificate, *see* 2025 IL 129718, ¶ 25, so the presumption of compliance applied.

a trial court ruling upon a motion to dismiss a post-conviction petition which is not supported by affidavits or other documents may reasonably presume that post-conviction counsel made a concerted effort to obtain affidavits in support of the post-conviction claims, but was unable to do so.”).[7]

Accordingly, to rebut the presumption created by the Rule 651(c) certificate, a petitioner must point to some evidence in the record *beyond* the petition’s alleged deficiencies that shows that counsel could have amended the petition to address those deficiencies but did not. *See People v. Addison*, 2023 IL 127119, ¶¶ 10-11, 23-25 (presumption overcome where record showed counsel’s amendments made petition *more* vulnerable to procedural bar than *pro se* petition, and counsel acknowledged this deficiency on the record but could not explain it); *Urzua*, 2023 IL 127789, ¶¶ 62-65 (presumption overcome where argument on motion to dismiss showed counsel failed to attach witness’s affidavits because counsel misunderstood postconviction pleading requirements); *Johnson*, 154 Ill. 2d at 241 (postconviction counsel filed affidavit admitting counsel “made no effort to investigate the claims

[7] Courts have understood *Johnson*’s “ordinary case” as any case in which postconviction counsel filed the requisite Rule 651(c) certificate, such that the presumption applies. *See Urzua*, 2023 IL 127789, ¶ 62 (observing that presumption of compliance applies when counsel files Rule 651(c) certificate, then quoting *Johnson*, 154 Ill. 2d at 241); *see also People v. Crawford*, 2025 IL App (1st) 221749-U, ¶ 38 (“reading *Johnson* and *Urzua* together indicates that ‘the ordinary case’ is one in which postconviction counsel files a Rule 651(c) certificate”).

raised in the defendant's post-conviction petition or to obtain affidavits from any of the witnesses specifically identified" in *pro se* petition).

Petitioner here flips the presumption of compliance on its head by relying on the amended petition's alleged deficiencies — first, the lack of evidence (or an explanation for its absence) to support five of petitioner's claims, *see* Pet. Br. 18-42, and second, the failure to allege *Strickland* prejudice, *see id.* at 42-44 — to argue that postconviction counsel did not comply with Rule 651(c), despite counsel's Rule 651(c) certificate, and so did not provide reasonable assistance. But when counsel files a valid Rule 651(c) certificate, courts presume that counsel provided reasonable assistance, and that any amendment not made was either unavailable or otherwise unnecessary to adequately present the petitioner's claims. *See Williams*, 2025 IL 129718, ¶¶ 44-49; *Huff*, 2024 IL 128492, ¶¶ 24-25; *Perkins*, 229 Ill. 2d at 50-51; *Johnson*, 154 Ill. 2d at 241. To rebut that presumption, petitioner must identify some evidence that shows counsel did not make factually available, legally essential amendments — *i.e.*, that counsel could have amended the petition to correct the deficiencies but did not. *See Addison*, 2023 IL 127119, ¶¶ 10-11, 23-25; *Urzua*, 2023 IL 127789, ¶¶ 62-65.

Petitioner misapplies *Addison* and *Urzua* to invert the presumption of compliance. *See* Pet. Br. 15, 20, 27-30, 41-42. In *Addison*, this Court held that postconviction counsel failed to amend the *pro se* petition to adequately present the petitioner's claims where counsel *removed* legally essential *pro se* allegations of ineffective assistance of appellate counsel. *See* 2023 IL 127119, ¶¶ 23-24. But the Court did not rely solely on the amended petition's deficiency to reach this conclusion. Rather, the record also showed that counsel had failed to grasp the consequence of removing these allegations. *See id.* ¶¶ 8-11 (counsel failed to answer court's direct questions about procedural bar despite admitting "perhaps there was the same oversight on the appellate level as trial counsel had"); *id.* ¶ 25 ("Postconviction counsel . . . never once countered the State's assertion that she had failed to allege ineffective assistance of appellate counsel" and her amendments "*eliminated* the necessary allegations that defendant had included in the *pro se* petition" (emphasis in original)). Thus, counsel's noncompliance with Rule 651(c) notwithstanding the presumption created by the certificate was established by evidence *in addition to the* inadequately pleaded petition.

The same was true in *Urzua*. There, postconviction counsel did not attach legally essential affidavits from identified witnesses, and the record established that counsel had not done so based on counsel's incorrect belief that the petitioner's unnotarized statement, verified only by certification pursuant to 735 ILCS 5/1-109, sufficed to support his claims at the second stage. *See* 2023 IL 127789, ¶ 63 (counsel "argued petitioner was not required to have the 'affidavit' notarized because it was a factual question to be resolved at a third-stage evidentiary hearing," which "was wrong"). Accordingly, the Court concluded that counsel's "failure to amend the petition or the attached unnotarized statement *and counsel's misstatement of the Act's affidavit requirements* . . . clearly rebutted" the presumption of reasonable assistance. *Id.* ¶ 64 (emphasis added).

Petitioner's reliance on *People v. Turner*, 187 Ill. 2d 406 (1999), is also misplaced, for *Turner* is inapposite. *See* Pet. Br. 16, 19, 21-24, 26, 29. In *Turner*, this Court did not state whether postconviction counsel had filed a Rule 651(c) certificate, *see* 187 Ill. 2d at 409-10, and so did not discuss whether the presumption of compliance applied, *see id.* at 410. The lack of any discussion of the presumption limits *Turner*'s application here. *See id.* at 410-15. Moreover, even if counsel had filed a certificate, *Turner* would not stand for the proposition that deficiencies in the amended petition alone rebutted the presumption of reasonable assistance. Rather, *Turner* found unreasonable assistance based on additional evidence beyond the petition itself. *See id.* at 414-15 ("[c]ounsel's statement at the hearing on the State's motion to dismiss . . . demonstrates that he was ignorant of one of the most basic principles of post-conviction proceedings"); *id.* at 414 (counsel's performance was unreasonable "[g]iven the totality of circumstances" where his "conduct represents a total failure of representation").

And since *Turner*, this Court has repeatedly emphasized that a petitioner must identify evidence in the record to rebut the presumption of reasonable assistance when counsel has filed a Rule 651(c) certificate. *See, e.g.*, *Williams*, 2025 IL 129718, ¶¶ 44-49; *Urzua*, 2023 IL 127789, ¶¶ 54, 62-

65; *Addison*, 2023 IL 127119, ¶¶ 10-11, 23-25; *Perkins*, 229 Ill. 2d at 50-51; *Johnson*, 154 Ill. 2d at 241. Pointing to a petition's alleged deficiencies as the only "evidence" that counsel did not fulfill his Rule 651(c) duty to amend thus impermissibly flips the presumption of compliance created by the filing of a Rule 651(c) certificate. Courts instead presume that a petition's alleged deficiencies resulted because counsel could not cure them, unless the petitioner presents evidence showing otherwise.

Here, petitioner points to no evidence in the record that suggests counsel could have cured the petition's alleged deficiencies, such that counsel failed to amend the petition as necessary to do so. Petitioner merely posits that because counsel did not attach supporting evidence — the existence of which petitioner merely speculates, *see* Pet. Br. 21-22 (speculating that the defense expert Reilly might have contradicted Dr. Jones's testimony); *id.* at 22-23 (speculating that Dr. Kim might have offered different conclusions about the cause of Diamond's death and timing of her injuries than Jones offered); *id.* at 23-24 (speculating that statements in Tate's letters and a police report may have bolstered petitioner's defense); *id.* at 24-26 (speculating that trial counsel's notes or affidavit may reveal more on juror Lieak's selection, or that court might have denied a for-cause challenge that did not appear in trial record) — then *ipso facto*, counsel did not fulfill his Rule 651(c) duty to amend. And petitioner fails even to speculate as to what counsel could have argued or alleged to support petitioner's allegations of

Strickland prejudice. *See* Pet. Br. 43. But petitioner's speculation that perhaps counsel could have amended the petition to withstand dismissal — without more — cannot overcome the presumption that counsel did what he could with what little he had available, but that the petition simply could not be amended to present a viable claim. *See Williams*, 2025 IL 129718, ¶ 49; *Perkins*, 229 Ill. 2d at 50-51; *Johnson*, 154 Ill. 2d at 241.

In sum, petitioner has failed to identify any evidence in the record that rebuts the presumption created by postconviction counsel's Rule 651(c) certificate that counsel complied with Rule 651(c) and provided reasonable assistance.

2. Petitioner's proposed amendments are not necessary to adequately present his claims because they are either presumptively unavailable or irrelevant.

Petitioner fails to show that the amendments he faults postconviction counsel for not making were "necessary" to adequately present his claims within Rule 651(c)'s meaning. Rather, his proposed amendments are not necessary because they are either presumptively unavailable, *see Huff*, 2024 IL 128492, ¶ 24; *Johnson*, 154 Ill. 2d at 241, or legally irrelevant to advancing his claims. Specifically, amendment was not necessary to present petitioner's claims that trial counsel was ineffective for (a) not presenting expert witness testimony, (b) not moving to admit documents containing Tate's out-of-court statements, and (c) allowing Lieak to serve on the jury, or that appellate counsel was ineffective for failing to raise the trial court's seating of Lieak. Neither was amendment necessary to explicitly allege *Strickland* prejudice because petitioner had already presented his ineffective-assistance claims in proper legal form by alleging facts to show prejudice.

Petitioner's claims of ineffective assistance of counsel are governed by the familiar *Strickland* standard. *People v. Williams*, 2024 IL 127304, ¶ 22 (citing *Strickland v. Washington*, 466 U.S. 668 (1984)). Under that standard, petitioner must demonstrate that counsel's performance (1) was "deficient," in that it "fell below an objective standard of reasonableness"; and (2) "prejudiced the defense," in that "there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different." *Strickland*, 466 U.S. at 687-88, 694.

a. Amendment to attach evidence of defense expert testimony was unnecessary because such evidence was either irrelevant or presumptively unavailable.

Contrary to petitioner's assertion, *see* Pet. Br. 20-23, Rule 651(c) did not obligate postconviction counsel to amend the petition by either attaching evidence of expert testimony or explaining the absence of such evidence to support petitioner's two claims that counsel was ineffective for not presenting such testimony. These amendments were not "necessary" under Rule 651(c) because the relevant evidence was either already in the record or presumptively unavailable.

Extra-record evidence is often — but not always — necessary to support postconviction claims of ineffective assistance of trial counsel.

Section 122-2 of the Act requires that the petition both "clearly set forth the respects in which petitioner's constitutional rights were violated" and "have attached thereto affidavits, records, or other evidence supporting its allegations or . . . state why the same are not attached." 725 ILCS 5/122-2. "The purpose of the 'affidavits, records, or other evidence' requirement is to establish that a petition's allegations are capable of objective or independent corroboration." *People v. Hodges*, 234 Ill. 2d 1, 10 (2009). Accordingly, if a petitioner's claims are apparent from the trial court record, then no additional evidence or explanation is needed. *See, e.g.*, *People v. Veach*, 2017 IL 120649, ¶ 51 (record sufficient to resolve ineffective-assistance claim, so extra-record evidence not necessary). Rather, when a claim is apparent from the record, it is forfeited because it could have been raised on direct appeal and can be raised on postconviction review only as a basis for a claim that appellate counsel was ineffective for not raising it. *See People v. English*, 2013 IL 112890, ¶ 22.

i. The trial record contained evidence of Kim Reilly's testimony.

Postconviction counsel did not need to attach evidence of proposed defense expert Kim Reilly's testimony to adequately present petitioner's claim that trial counsel was ineffective for not presenting Reilly's testimony to challenge the cause of Diamond's death or the estimated time her fatal injuries were inflicted, *see* C791, because evidence of Reilly's proposed testimony was already in the record.[8] The record shows that Reilly would have testified that Dr. Kim had misidentified normal suture lines in Diamond's skull as a fracture, and that she was not qualified to offer any opinion as to cause of death or the timing of Diamond's injuries. *See* SUP R 1127. Because petitioner alleged that appellate counsel was ineffective for raising this issue that was apparent in the trial record, C791, his claim was presented in proper legal form, *see English*, 2013 IL 112890, ¶ 22.

As petitioner recognizes, Pet. Br. 21, trial counsel initially proposed qualifying Reilly as an expert to challenge Dr. Kim's conclusion that Diamond had a skull fracture and proffered her testimony that the mark on Diamond's skull was not a fracture but a suture line, *see* SUP R 1127. When it became apparent that the People would not be presenting evidence that the mark was a fracture, counsel decided it was no longer necessary to present Reilly's testimony. Sup R 1139-40. And petitioner's argument that Reilly's opinion was necessary to dispute Dr. Jones's opinion regarding the presence of a skull fracture fails because it misapprehends Jones's trial testimony. *See* Pet. Br.

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[8] The amended petition is ambiguous as to whether petitioner's claim that trial counsel was ineffective for failing to use "a defense expert" refers to Kim Reilly or some other unspecified expert witness. *See* C791. In his *pro se* filings, petitioner refers to "their defense expert," C540, 632, and he clarifies before this Court that he meant Reilly, *see* Pet. Br. 21-22. To the extent that petitioner referred to some unspecified expert witness, postconviction counsel had "no obligation . . . to engage in a generalized fishing expedition" seeking witnesses not specifically identified in the *pro se* petition. *Johnson*, 154 Ill. 2d at 147-48; *see also People v. Moore*, 189 Ill. 2d 521, 542-43 (2000) (same); *People v. Williams*, 186 Ill. 2d 55, 60-61 (1999) (same).

21 (citing C540, 632, 791). He contends that Jones's trial testimony about "[diastatic] fractures" on Diamond's skull unexpectedly confirmed — rather than contradicted — Kim's conclusion that Diamond had a skull fracture. *See id.* at 21-22. Petitioner then argues that counsel was ineffective for not calling Reilly, whose testimony "would have conflicted with the evidence presented at trial" regarding the skull fracture. *Id.* at 22.

But the record shows that Dr. Jones testified, as trial counsel expected, that the mark on Diamond's skull was a suture line, *not* a skull fracture. SUP R 1139. Jones explained that "[diastatic] fracture" is the term for a suture line that has been forced open due to brain swelling and is not a broken bone or fracture in the skull. SUP R 1501-02, 1513, 1519 V2. Accordingly, Reilly's opinion would have agreed, rather than conflicted, with Jones's testimony that Diamond did not have a skull fracture. *See* Pet. Br. 21-22.

The record is likewise clear that it was not necessary for postconviction counsel to attach additional evidence of Reilly's testimony about the cause of Diamond's death and timing of her injuries. *See id.* at 21 ("Hammond had alleged *pro se* that the defense should have used 'their' expert [*i.e.*, Reilly] on those issues."). The record made clear that Reilly had no such testimony to offer. Before trial, counsel explained that Reilly was not qualified to testify about anything beyond whether the mark on Diamond's skull was a suture line or a skull fracture. *See* SUP R 1127; C191-93. As counsel explained, Reilly was a Ph.D. student in physical anthropology who "kn[e]w nothing about causes of death or beating [or] . . . hemorrhaging or anything else like that." SUP R 1127.

In sum, the record clearly established what opinion testimony Reilly could (and could not) provide. Reilly offered no opinion that would rebut Dr. Jones's opinion regarding the nature of the marks on Diamond's skull and could offer no opinion about the cause of Diamond's death or the timing of her injuries. Therefore, it was not necessary for postconviction counsel to attach additional evidence of Reilly's testimony, and petitioner's claim was presented in proper legal form.

ii. Dr. Kim's testimony was presumptively unavailable.

Petitioner did not need to attach evidence of Dr. Kim's allegedly favorable testimony regarding the cause of Diamond's death or the timing of her injuries to support his claim that trial counsel was ineffective for failing to investigate and interview Kim on those points, because that evidence was presumptively unavailable. Unlike Reilly, Kim almost certainly could have offered expert opinion testimony on those matters. And if evidence of that opinion was available, postconviction counsel had to attach it, lest petitioner's claim that trial counsel was ineffective for not interviewing Kim, C793, be dismissed for lack of supporting evidence, *see People v. Enis*, 194 Ill. 2d 361, 380 (2000) (without affidavit, "a reviewing court cannot determine whether the proposed witness could have provided testimony or information favorable to the defendant," so claim must be dismissed).

Accordingly, Rule 651(c) required postconviction counsel to amend the petition to provide any available facts to shape this claim into proper legal form. *See* 725 ILCS 5/122-2; *Perkins*, 229 Ill. 2d at 50-51; Ill. S. Ct. R. 651(c). But postconviction counsel's Rule 651(c) certificate creates the presumption that counsel made all necessary amendments, including amendments to attach available evidence that was necessary to satisfy postconviction pleading requirements. *See supra* §§ A & B.1; *see also Huff*, 2024 IL 128492, ¶ 24; *Johnson*, 154 Ill. 2d at 241. Absent evidence that counsel failed to attach available factual support, the Court presumes that there was no evidence available to cure the petition's deficiencies. *See Williams*, 2025 IL 129718, ¶¶ 44-49; *Perkins*, 229 Ill. 2d at 50-51.

Nothing in the record shows that any favorable testimony from Dr. Kim regarding the cause of Diamond's death or the timeframe of her injuries was available to postconviction counsel. Indeed, the record suggests that Kim's testimony was most likely *not* available when the amended petition was prepared in 2023, given that prosecutors had been unable to present his testimony at trial in 1999. SUP R 1139.[9] Nor does the record suggest that

[9] Although not a matter of record, it appears that Kim — the sole pathologist for 38 years at the Lake County Indiana Coroner's Office, where the autopsy was conducted, *see* Sup R 1139 — retired in 2015 and passed away in October 2023. *See Young Min Kim*, PEDERSON RYBERG FUNERAL HOME,

Kim had any favorable testimony to offer. Dr. Jones based her conclusions on Kim's autopsy report, and Jones never testified that she disagreed with Kim regarding the cause of Diamond's death or the timeframe of her injuries. Rather, Jones only disagreed with Kim regarding the cause of the marks on Diamond's head, with Jones believing they were suture lines and Kim believing they were skull fractures. SUP R 1513 V2. Absent any evidence that a favorable opinion from Kim regarding the cause of Diamond's death or the timeframe of her injuries was available for counsel to attach to the petition, petitioner fails to establish that counsel provided unreasonable assistance by not amending the petition to attach such evidence.

Petitioner's arguments to the contrary are unavailing. Notably, petitioner dismisses this Court's pronouncement in *People v. Johnson* — that a court must presume that postconviction counsel made every effort to obtain necessary evidence but was unable to do so — as either dicta or inapposite. *See* Pet. Br. 40-42; *see also* A36 ¶ 100 (citing *People v. Wallace*, 2016 IL App (1st) 142758, ¶ 27, relying on *Johnson*, 154 Ill. 2d at 241). Not so. Rather, *Johnson* framed the discussion of compliance with Rule 651(c) by declaring that this presumption applies "in the ordinary case," 154 Ill. 2d at 241 — *i.e.*, when counsel has filed a Rule 651(c) certificate, *see Urzua*, 2023 IL 127789, ¶ 62; *Crawford*, 2025 IL App (1st) 221749-U, ¶ 38. *Johnson* was no such

https://www.pedersenryberg.com/obituaries/Young-Min-Kim?obId=44244548 (last visited June 10, 2026).

"ordinary case" because postconviction counsel did not file a Rule 651(c) certificate. 154 Ill. 2d at 238. Thus, the Court recognized that the presumption of compliance did not apply and, instead, sought affirmative evidence of compliance in the record. *Id.* at 238-39. But nothing in *Johnson* suggests that its statement of the general rule was mere dicta. Rather, *Johnson* set forth the guiding principles under Rule 651(c), then explained that, in that case, the record affirmatively demonstrated counsel's noncompliance. *See id.*

Petitioner's attempt to dismiss *Johnson*'s statement of the rule is further undermined by this Court's subsequent reaffirmations that, when counsel certifies compliance with Rule 651(c) and does not amend a petition to add supporting evidence, courts are to presume that no such evidence was available. *See Huff*, 2024 IL 128492, ¶ 24 ("It is presumed from the lack of amendment that there were none to be made."); *id.* ¶ 25 ("Counsel's Rule 651(c) certificate created the presumption that no amendments were available."); *Perkins*, 229 Ill. 2d at 50-51 (presumption applies where no facts available to counsel to amend petition to meet timeliness requirement). As discussed in sections A & B.1 *supra*, an amendment is not "necessary" under Rule 651(c) unless it is factually available. *See Williams*, 2025 IL 129718, ¶¶ 44-49 (nothing in record showed additional facts were available to support ineffective-assistance claim). Accordingly, when counsel has certified compliance with Rule 651(c) and does not attach evidence that, if available, would be necessary to shape a claim into proper legal form, that evidence is presumptively unavailable.

Petitioner is also incorrect that if postconviction counsel cannot obtain supporting evidence, then, to comply with Section 122-2's pleading requirements, counsel must amend the petition to detail the steps taken to obtain that evidence and explain why that evidence was not available. *See* Pet. Br. 19, 21-24, 26, 28-30. The presumption of compliance created by counsel's Rule 651(c) certificate already accomplishes what Section 122-2 requires: By filing the certificate, counsel has communicated that such evidence is unavailable. *See Huff*, 2024 IL 128492, ¶¶ 22, 24; *Johnson*, 154 Ill. 2d at 241; *see also* §§ A & B.1 *supra*.

This proposed rule would also needlessly pit counsel against client, for requiring that postconviction counsel explain why supporting evidence was unavailable would often require counsel to undermine a petitioner's claims that are meritless but not necessarily frivolous. For example, if a petitioner faults counsel for not calling witnesses in support of his alibi that he had been jogging at a park at the time of the charged offense, postconviction counsel may be unable to find anyone who remembered seeing petitioner jogging. But the unavailability of that evidence would not necessarily render the claim frivolous, such that counsel has an ethical duty not to raise it — after all, it is possible that there are such witnesses out there and that counsel was simply unable to find any. But requiring counsel to detail that investigation had uncovered no support for the petitioner's claim would needlessly pit counsel against client, where such conflict is not dictated by counsel's ethical duties and would provide the circuit court with information unnecessary to its adjudication of the claim, given that the court will reject the claim as unsupported regardless.

Petitioner further argues that the presumption of compliance is intrinsically flawed because it includes no mechanism for uncovering noncompliance. *See* Pet. Br. 33-37. To be sure, the presumption created by filing a Rule 651(c) certificate relies on an attorney's word as an officer of the court. *See Perkins*, 229 Ill. 2d at 50 ("when an attorney files a certificate under Rule 651(c), the attorney is officially representing to the court that the duties listed in the certificate have been fulfilled"). But an attorney who affirmatively misrepresents his compliance with Rule 651(c) violates his duty of candor to the court and could be subject to disciplinary sanctions. *See, e.g.*, *In re Thomas*, 2012 IL 113035, ¶ 13 (complaint alleged that attorney's misrepresentations in certificate of service violated Illinois Rules of Professional Conduct and was subject to discipline under Supreme Court Rule 770); *see also* Ill. R. Prof'l Conduct 3.3(a) ("A lawyer shall not knowingly: (1) make a false statement of fact or law to a tribunal[.]"); Ill. R. Prof'l Conduct 8.4(a) ("conduct involving dishonesty, fraud, deceit, or misrepresentation" is professional misconduct).

Indeed, when the Court has found unreasonable assistance of counsel, it has frequently done so based on counsel's admissions regarding the limits of counsel's investigations or understanding of the law. *See Addison*, 2023 IL 127119, ¶¶ 10-11, 23-25; *Urzua*, 2023 IL 127789, ¶¶ 62-65; *Johnson*, 154 Ill. 2d at 241. That the presumption of compliance created by filing a Rule 651(c) certificate, like the validity of the certificate itself, is founded on counsel's professional duty of candor toward the court is not a reason to discard it. *Cf. Custer*, 2019 IL 123339, ¶¶ 37-38 (rejecting petitioner's argument in favor of requiring courts to conduct a "*Krankel*-like" inquiry for unreasonable-assistance allegations, because Rule 651(c) — "the gold standard for postconviction duties" — already requires certification, which establishes rebuttable presumption of reasonable assistance).

Finally, petitioner argues that the Court should reject the presumption that evidence not attached by counsel who certified compliance with Rule 651(c) was unavailable despite counsel's good-faith efforts to obtain it because Rule 651(c) requires actual compliance rather than a good-faith effort to comply. *See* Pet. Br. 38-40. But this argument misses the mark: When counsel makes a good-faith effort to obtain supporting evidence, is unable to do so, and therefore does not attach such evidence, counsel *has* complied with Rule 651(c). The requirement that counsel make all amendments necessary to adequately present the petitioner's claims does not include amendments to attach unavailable evidence, and evidence is unavailable if counsel cannot obtain it through good-faith efforts. *See Johnson*, 154 Ill. 2d at 241.

Accordingly, when counsel certifies that counsel made all necessary amendments, counsel certifies that any amendment not made was not necessary because it was either not essential or simply unavailable, despite counsel's best efforts. *Huff*, 2024 IL 128492, ¶¶ 24-25. Therefore, counsel who certifies that counsel made all necessary (*i.e.*, legally essential and factually available) amendments after conducting a good-faith investigation for supporting evidence has complied with Rule 651(c) and provided reasonable assistance regardless of that investigation's success. *See Williams*, 2025 IL 129718, ¶¶ 44-49; *Perkins*, 229 Ill. 2d at 50-51.

Contrary to petitioner's assertions, *see* Pet. Br. 38-39, this Court's decision in *People v. Owens*, 139 Ill. 2d 351 (1990), does not suggest otherwise. *Owens* confirmed that counsel cannot comply with Rule 651(c)'s consultation requirement if the petitioner is so mentally unfit that he cannot communicate with counsel. 139 Ill. 2d at 361-62. But *Owens* merely acknowledges the truism that counsel cannot honestly represent to the court that he consulted with a petitioner when such consultation is essentially impossible due to the petitioner's mental incapacity. *See id.* If the petitioner is capable of communicating with counsel, counsel speaks to him, and counsel makes a good-faith effort during that conversation to ascertain all of the petitioner's contentions of error, then counsel has complied with that Rule

651(c) obligation, even if the petitioner later complains that he secretly harbored additional contentions of error that counsel's best efforts failed to uncover. Similarly, postconviction counsel fulfills the obligation of making all legally essential and factually available amendments by seeking out supporting evidence, regardless of whether that search is ultimately successful.

Here, nothing in the record shows that counsel did not make the good-faith effort to find supporting evidence that the Court presumes based on counsel's certification of compliance with Rule 651(c). The fact that counsel did not ultimately succeed means that amendment to attach such evidence was not necessary because it was unavailable, rather than counsel did not fulfill his obligations under Rule 651(c) as he certified he did.

In sum, amendment to attach evidence of Reilly's and Dr. Kim's testimony was not necessary to shape petitioner's claims into proper legal form. No additional evidence of Reilly's testimony was necessary given the evidence already in the record, and evidence of Kim's favorable testimony for the defense — while legally essential to support petitioner's ineffective-assistance claim if available — was nevertheless unnecessary within Rule 651(c)'s meaning because nothing in the record shows that such evidence was available to counsel.

b. Amendment to attach documents containing Tate's statements was unnecessary because such statements are inadmissible hearsay and thus legally irrelevant to petitioner's claims.

Nor was it necessary to amend the petition to attach Tate's letters to petitioner or Krull's police report in support of petitioner's claim that trial counsel was ineffective for not moving *in limine* to admit the documents (and thereby present Tate's out-of-court statements contained in those documents). *See* C794; *see also* C653-54. Because these documents could not advance petitioner's ineffective-assistance claims as a matter of law, they are legally irrelevant and thus unnecessary under Rule 651(c).

Petitioner contends that postconviction counsel should have obtained and attached unspecified letters from Tate while in jail (*i.e.*, letters other than Tate's two letters admitted at sentencing, C478-83, 485-88) and Chief Krull's police report recounting Tate's statements that, in petitioner's view, would support his innocence. Pet. Br. 24; *see also* C653-54 (if believed, Tate's statements in letters "would have proved that defendant spanked victim with his hand and not with a belt" and that "victim fell a lot and that trauma injuries to victim's head could have been the results of falling a lot"); C654 (Tate's statement repeated in Krull's report "proves that defendant could not have tied victim in car seat like his statement stated"). But even if these documents exist, it would not be necessary to amend the petition to attach them because their contents are legally irrelevant to petitioner's claim that trial counsel was ineffective for not moving *in limine* admit them.

Tate's statements, as well as the documents containing them, would have been inadmissible under the rule against hearsay. *See People v. Chatman*, 2024 IL 129133, ¶ 33 (rule against hearsay "prohibit[s] the introduction of out-of-court statements offered to prove the truth of the matter asserted"). Therefore, trial counsel was not ineffective for not seeking admission of this *per se* inadmissible evidence. *See People v. Pingelton*, 2022 IL 127680, ¶ 60 ("A defendant's trial attorney cannot be considered ineffective for failing to raise or pursue what would have been a meritless motion or objection."). Because amendments that are legally irrelevant to a claim's success are not necessary to adequately present the claim, it was not necessary for postconviction counsel to amend the petition to attach this irrelevant evidence.

c. Amendment to attach extra-record evidence supporting petitioner's claims regarding juror Lieak was unnecessary because such evidence was presumptively unavailable.

Similarly, it was unnecessary for postconviction counsel to attach evidence of (entirely speculative) off-the-record discussions about juror Lieak. Petitioner acknowledges that his claims concerning Lieak's selection are "not among the traditional types of post-conviction claims that require supporting evidence," but nevertheless argues that postconviction counsel should have provided "additional documentation based on the unique facts of his case." Pet. Br. 24. But petitioner's speculation that such documentation exists does not extend to identifying what that documentation might be. Nor does the record provide any support for petitioner's speculation. To the contrary, the record establishes that Lieak affirmed under oath that she could be fair and impartial despite her having met one prosecution witness and her familiarity with police officers generally. SUP R 1365 V2.

Nothing in the record rebuts Lieak's testimony that she could be impartial or establishes that any further discussion regarding Lieak's selection took place. *See* SUP R 1171; SUP R 1361-76 V2. To the extent that petitioner speculates that extra-record evidence might exist to support his claims that trial counsel was ineffective for "selecting" Lieak, C793, or that appellate counsel was ineffective for failing to argue on direct appeal that the trial court erred by failing to strike Lieak, C794, that speculation cannot overcome the presumption that no such evidence was available, given that postconviction counsel certified making all necessary amendments and did not amend the petition to attach such evidence, *see Williams*, 2025 IL 129718, ¶¶ 44-49; *Huff*, 2024 IL 128492, ¶ 24; *Johnson*, 154 Ill. 2d at 241.

d. Amendment to allege prejudice was unnecessary because the amended petition incorporated petitioner's *pro se* filings, which adequately alleged prejudice.

Finally, amendment was not necessary to allege *Strickland* prejudice because petitioner's ineffective-assistance claims were presented in proper legal form. The amended petition incorporated petitioner's factual allegations from his *pro se* filings. C790. In those filings — particularly the 2013 "revised" petition, which added factual allegations to many of the claims raised in his 2007 and 2010 petitions — petitioner clearly alleged facts that he believed showed that counsel's alleged errors affected the outcome of his trial or sentencing.[10]

[10] *See, e.g.*, C538, 613-17 (trial counsel's statements during closing argument "prejudice[d] defendant before the jury and deprived the defendant of a fair trial"); C541, 618-23, 628, 630 (faulting appellate counsel for not raising sufficiency challenge because "there was no evidence that proved or showed the defendant was present during the time of the victim's injuries," and alleging related facts to show that "trial counsel, prosecutors, and the court['s] errors . . . prejudice[d] him and denied him a fair trial"); C543-44, 630 ("the State failed to prove beyond a reasonable doubt that defendant knowingly and intentionally inflicted the injuries that caused death," so "appellate counsel should have argued the burden is on the State to prove beyond a reasonable doubt that the defendant committed the crime accused of"); C545, 629 (alleging that trial counsel's failure to seek a jury instruction related to prior bad acts prejudiced petitioner "because . . . prior conduct or prior bad acts of abuse did not contribute to or cause victim's death," so "this deprived the defendant of a fair trial"); C546-47, 565-71, 632 ("appellate counsel could have argued the fact is the State failed to present any sufficient evidence during the defendant's trial or sentencing to prove beyond a reasonable doubt that the defendant's conduct or behavior was indeed exceptionally brutal and heinous," followed by factual allegations); C550 ("defendant ask[s] that the court consider the facts in this petition and see that he was denied a fair trial"); C548, 646-50 (alleging facts related to admission of petitioner's statements to police and Assistant State's Attorney, which was "the State's strongest evidence against defendant" and should have been suppressed); C572 ("appellate counsel should have argued the fact is that the court erred in its decision when it denied defendant's motion for directed verdict because the State failed to prove its case because it failed to present sufficient evidence," followed by factual allegations); C624-27 (trial counsel should have objected to hearsay statements, which "prejudice[d] defendant during trial and denied defendant his right to a fair trial"); C548, 631 (appellate counsel provided ineffective assistance by failing to challenge court's denial of motion to suppress search of petitioner's apartment where Tate did not have authority to grant consent); C633-40 (prosecutors "inappropriately invoke[d] the passion of the jurors and misled the jury to believe that they somehow made a promise to bring Diamond justice" and "defense counsel['s] failure to object to such extreme misconduct prejudiced defendant"); C641-46 (failure to investigate Dr. Kim prejudiced defendant because Kim's testimony "would have proved that defendant did not cause

Petitioner argues that "the primary reason the circuit court dismissed the petition at the second stage" was that "neither [he] nor post-conviction counsel had alleged prejudice." Pet. Br. 43. But that is not so; the circuit court held that the claims failed because petitioner's allegations of prejudice were insufficient to *establish* prejudice, not that petitioner did not *allege* prejudice. R187 (ruling that petitioner's claims failed "to meet the *Strickland* test" and that "[n]o prejudice ha[d] been shown"). In other words, the circuit court determined that petitioner's ineffective-assistance claims were properly presented but nevertheless meritless. And the appellate court, too, observed that petitioner had properly presented his ineffective-assistance claims by alleging prejudice through the numerous factual allegations in his *pro se* filings, which postconviction counsel incorporated into the amended petition. A32.

To the extent petitioner argues that postconviction counsel failed to amend the petition to allege additional facts or add legal argument that would allow the petition to survive second-stage dismissal, *see* Pet. Br. 43, counsel was not required to add to petitioner's meritless — but properly presented — claims, *see Custer*, 2019 IL 123339, ¶ 38 (Rule 651(c)'s "requirements do not include bolstering every claim presented in a

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victim's death when he came home and spanked her on the butt with his hand the early morning before her death"); C650 (appellate counsel was ineffective for failing to raise issue of juror bias, which "violated defendant's rights to a fair trial by [an] impartial jury").

petitioner's pro se postconviction petition, regardless of its legal merit"). And counsel here apparently had nothing to add to support petitioner's argument that he was prejudiced. Nothing in the record shows that postconviction counsel failed to include any available facts that would have established prejudice. So, postconviction counsel provided reasonable assistance by incorporating petitioner's *pro se* allegations without amending the petition to include presumptively unavailable facts or legal argument. *See Williams*, 2025 IL 129718, ¶¶ 46-49 (where nothing in record indicates any better facts or argument was available to support *Strickland* prejudice element of ineffective-assistance claim, postconviction counsel was not unreasonable for not alleging presumptively unavailable facts or argument).

3. Postconviction counsel was not ethically obligated to withdraw.

Finally, postconviction counsel was not ethically obligated to withdraw simply because petitioner's claims, as presented, failed to make a substantial showing of a constitutional deprivation. *See* Pet. Br. 30-33. Although petitioner's claims were weak, and counsel presumptively could not obtain evidence that would support some of the claims' factual allegations, nothing in the record demonstrates that counsel believed that petitioner's claims were not merely weak, but frivolous or patently without merit. *See Huff*, 2024 IL 128492, ¶¶ 29-30 (postconviction counsel has no duty to withdraw where nothing in record shows postconviction counsel knows claims to be frivolous or patently without merit).

And postconviction counsel is relieved of the obligation to present a petitioner's claims only when those claims are frivolous, not when they are merely meritless, such as for lack of supporting evidence. For example, in *Huff*, the Court held that postconviction counsel had no obligation to withdraw even though the petitioner's claim was meritless. 2024 IL 128492, ¶ 30. There, the petitioner claimed that his natural life sentence violated *Apprendi v. New Jersey*, 530 U.S. 466 (2000). *Id.* ¶ 1. Postconviction counsel filed a Rule 651(c) certificate but made no amendments to the claim. *Id.* ¶¶ 7-10. This Court determined that, although petitioner's claim was meritless and could not be amended to survive dismissal, nothing in the record showed counsel *knew* that claim to be frivolous rather than simply meritless. *Id.* ¶¶ 28-30. Therefore, counsel had no obligation to withdraw. *Id.* ¶ 30.

The same is true here. Nothing in the record shows that postconviction counsel *knew* petitioner's claims to be frivolous or patently without merit. The circuit court never made such a finding, as the petition advanced automatically to the second stage when the court failed to act on the petition within 90 days. C553-54; SUP R 756, 769-74. Although petitioner's first appointed counsel withdrew pursuant to *Greer*, petitioner added new claims and factual allegations in his later *pro se* filings. *Compare* C535-50 *with* C564-80, 608-80, 775-81. Moreover, "[d]ifferent counsel may differ in their opinions regarding the merits of the petition." *Huff*, 2024 IL

128492, ¶ 29. And at the hearing on the motion to dismiss, counsel stated he "believe[d] that the claims presented in the petitions state a substantial showing of deprivation of constitutional rights." R186. As in *Huff*, "[t]his is not a situation where postconviction counsel confessed to the motion [to dismiss] or informed the court that petitioner's contentions had no merit." 2024 IL 128492, ¶ 31.

Petitioner here incorrectly assumes that "if counsel had failed in a good-faith attempt to support [petitioner's] claims, the nature of many of those claims was such that counsel would have known they were frivolous and thus been ethically prohibited from presenting them." Pet. Br. 32. Not so. As explained in section B.2 *supra*, only one of petitioner's claims required extra-record evidence to shape the claim into proper legal form: that trial counsel was ineffective for failing to interview Dr. Kim, and an affidavit or other evidence from Kim was presumptively unavailable and so unnecessary within Rule 651(c)'s meaning. *See Johnson*, 154 Ill. 2d at 241. But even if counsel knew he could not provide evidentiary support for petitioner's claim, he could still believe that the substance of the claim had merit — proper support simply was not available to substantiate those merits. Nor does anything in the record demonstrate that counsel knew any of the other claims in the petition were frivolous or patently without merit. Although weak, the claims were presented in proper legal form, so counsel had no duty to withdraw where the record showed he believed the claims made a substantial showing of a constitutional violation. R186; *Huff*, 2024 IL 128492, ¶¶ 29-31.

CONCLUSION

For these reasons, the People respectfully request that this Court affirm the appellate court's judgment.

June 10, 2026

Respectfully submitted,

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RULE 341(c) CERTIFICATE OF COMPLIANCE

I certify that this brief conforms to the requirements of Rules 341(a) and (b). The length of this brief, excluding the pages containing the Rule 341(d) cover, the Rule 341(h)(1) table of contents and statement of points and authorities, the Rule 341(c) certificate of compliance, the certificate of service, and those matters to be appended to the brief under Rule 342(a), is 13,299 words.

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CERTIFICATE OF FILING AND SERVICE

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 June 10, 2026, the foregoing **Brief of Respondent-Appellee People of the State of Illinois** was filed with the Clerk of the Illinois Supreme Court using the Court's electronic filing system, which provided service to the following:

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