2026 IL App (1st) 232218
No. 1-23-2218
Opinion filed November 12, 2026

IN THE

APPELLATE COURT OF ILLINOIS

FIRST DISTRICT

THIRD DIVISION

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

v.

CARLOS MEDERA, Defendant-Appellant.

Appeal from the Circuit Court of Cook County.
Honorable William G. Gamboney, Judge, Presiding.
No. 94 CR 17605

JUSTICE LAMPKIN delivered the judgment of the court, with opinion.
Presiding Justice Quish and Justice Rochford concurred in the judgment and opinion.

OPINION

¶ 1 *Audi alteram partem.* "Hear the other side." That motto is "[t]he first principle of the administration of justice." *Blain v. Shaffner*, 37 Ill. App. 394, 395 (1890). Notably, that command does not include "at some point" at the end. As this case demonstrates, it is not enough to hear the other side *eventually*. Defendant Carlos Medera's[1] postconviction petition, filed pursuant to the Post-Conviction Hearing Act (Act) (725 ILCS 5/122-1 *et seq.* (West 2000)), was heard 23 years after it was filed and 17 years after postconviction counsel was appointed. In the years leading up to the hearing, there was unimaginable and unacceptable inaction by postconviction counsel.

[1]Defendant's last name is spelled as both "Medera" and "Madera" throughout the record. For consistency, we have used the spelling contained in defendant's notice of appeal and docketing statement.

Despite the delay, postconviction counsel failed to make a routine amendment that would have turned an uncognizable claim into a cognizable one—a basic requirement of postconviction representation.

¶ 2 For the reasons that follow, we reverse the trial court's judgment dismissing defendant's postconviction petition at the second stage and remand for further second-stage proceedings with assignment of new counsel to make any necessary amendments.

¶ 3 I. BACKGROUND

¶ 4 A. Trial and Direct Appeal

¶ 5 Following a jury trial in 1995, defendant was convicted of first degree murder, attempted first degree murder, and aggravated battery with a firearm related to the shooting death of Jason Abraham and the shooting of his aunt, Linda Abraham Buie on June 17, 1994. The trial court sentenced defendant to 60 years in prison for first degree murder and a consecutive 20-year sentence for attempted first degree murder.

¶ 6 The trial testimony reflected that on June 17, 1994, defendant was in a black Chevrolet Caprice at a stoplight at 2:30 p.m. when Abraham and his friend, Angel Maldonado, approached defendant's car and stood in front of it. Abraham, a member of the Spanish Cobras, displayed a gang sign at defendant. Defendant, who was a member of the Insane Unknown gang, responded with a gang sign of his own. Abraham then used another gang sign as a form of disrespect. As defendant drove away, he said, "I'll be back for you, fat pussy."

¶ 7 Abraham went home and talked to Buie on the front porch of his home. At approximately 2:45 p.m., a black Chevrolet stopped in front of the house. Defendant exited the vehicle with a gun and fired seven or eight times. At the time, Maldonado was sitting in a red Chevrolet Blazer with Angel Garcia across the street from Abraham's home. Both men identified the shooter as

defendant. Justin Abraham, Abraham's brother, was watching TV with Renaldo Rivera, the governor of the Insane Campbell Boys gang, at the time of shooting. Both men witnessed the shooting from a bedroom, and both identified defendant as the shooter.

¶ 8 When defendant began firing, Buie stayed on the porch, but Abraham tried to run inside and was shot in the back. Those present took Abraham to the hospital where he died from his wounds. Buie was also transported to the hospital for a gunshot wound, which doctors treated. However, the doctors were unable to remove the bullet that struck Buie because it was lodged in her throat.

¶ 9 After his guilty verdict and sentencing, defendant filed a timely notice of appeal on December 18, 1995. That appeal was not docketed until September 17, 2002. In the interim, defendant filed a *pro se* petition for postconviction relief. That petition was summarily dismissed and defendant appealed. That appeal was consolidated with his direct appeal. This court affirmed defendant's conviction but reversed the dismissal of his *pro se* petition and remanded for second-stage proceedings because the trial court did not dismiss defendant's petition within the 90-day statutory deadline. *People v. Medera*, 361 Ill. App. 3d 1089 (2005) (table) (unpublished order under Illinois Supreme Court Rule 23).

¶ 10 B. Postconviction Proceedings

¶ 11 Defendant's *pro se* postconviction petition, filed on April 10, 2000, raised five claims: (1) he was denied his right to appeal when his appeal was not properly docketed, (2) he was denied his right to due process as a result of missing or nonexistent transcripts, (3) his attorney did not provide effective assistance because she failed to conduct a pretrial investigation into the State's case, (4) defendant was not proven guilty of first degree murder beyond a reasonable doubt, and

(5) he was improperly sentenced to consecutive sentences for the first degree murder of Abraham and attempted first degree murder of Buie.

¶ 12 The trial court dismissed defendant's petition on July 13, 2000. Upon remand in 2006, the trial court appointed defendant postconviction counsel Eileen Pahl. Pahl appeared for the first time on September 12, 2006, and informed the trial court that she needed to order defendant's transcripts.

¶ 13 On December 14, 2006, Pahl informed the trial court she had received defendant's transcripts but had not had an opportunity to read them yet. On March 22, 2007, Pahl informed the trial court she was not done reading defendant's transcripts due to other obligations. On June 20, 2007, Pahl again indicated she was not finished reading defendant's transcripts.

¶ 14 Throughout the entirety of 2008, Pahl continued to tell the trial court she needed additional time to read defendant's transcripts. On September 23, 2009, three years after she was appointed, she announced to the trial court that she had read half of defendant's transcripts. Then, on March 25, 2010, 3½ years after her appointment, Pahl claimed she had finished reading defendant's transcripts and that she needed to perform an investigation.

¶ 15 On September 21, 2010, four years after her appointment, Pahl informed the trial court that she needed additional time to investigate defendant's claims. On January 21, 2011, Pahl said she needed to obtain trial counsel's file and sought a continuance for time to do so. Two more court dates passed where Pahl failed to appear.

¶ 16 On October 26, 2011, Pahl informed the trial court she was unsuccessful in locating trial counsel's file and that she needed an additional continuance to "wrap up [her] work." Pahl appeared two more times, each time seeking a continuance.

¶ 17 Then on July 25, 2012, Pahl did not appear and was replaced with no explanation by a second attorney from the Office of the Cook County Public Defender (Public Defender). Counsel informed the trial court that she had read defendant's transcripts but needed additional time because she had other cases to work on. However, this attorney made no further court appearances. On October 24, 2012, six years after her appointment, Pahl reappeared, claiming she had three other postconviction cases to work on and that she was "trying to move as fast as I can on those so that I can get a chance to look at his case."

¶ 18 On May 2, 2013, Pahl informed the trial court that she needed additional time to complete her investigation. The trial court stated, "I guess I will presume that length of time is necessary for the nature of the case," and Pahl replied, "Yes, Your Honor." On August 1, 2013, Pahl stated she needed additional time to investigate. On October 30, 2013, Pahl informed the trial court there were a "few issues I need to do some further investigation upon."

¶ 19 On February 5, 2014, Pahl told the trial court that she had read defendant's transcripts and corresponded with him, but that she needed "to follow up on a few matters in his case."

¶ 20 On November 13, 2014, Pahl repeated that she had read defendant's transcripts and corresponded with him but that she had "a few more tasks [she needed] to complete before proceeding ahead in this case." On February 19, 2015, Pahl reported yet again that she had corresponded with defendant but added that "I need some further information from him in order to investigate this matter. There are a few issues about witnesses I still need to check out."

¶ 21 On May 20, 2015, Pahl reported that she was still investigating defendant's case and that she was still working to find more information about potential witnesses. On August 19, 2015, Pahl claimed she was working on obtaining additional information from defendant. On November 18, 2015, Pahl stated she needed to follow up with defendant to obtain additional information.

¶ 22 On February 24, 2016, Pahl reported that there were "a few matters" she needed to follow up on. She also declared, "I currently have been assigned twenty-nine postconviction cases. Four of them are set for evidentiary hearings. I have an appellate caseload, child protection appeals." On June 1, 2016, Pahl stated she had "additional matters" she needed to follow up on and that she had been "tied up" with other case obligations. On November 22, 2016, Pahl stated, "I have read the transcript. There are some missing records in the case *** that I need to follow up on. I'm currently assigned to 30 postconviction petitions. About five of them were appointed prior to Mr. Medera. I, also, have an appellate case load including currently expedited child protection appeals and an Illinois Supreme Court appeal." Throughout the proceedings, Pahl consistently recited the extent of her case load when asking for continuances.

¶ 23 On February 2, 2017, Pahl stated she had additional investigation that needed to be done and that "[t]here are some missing files." On May 4, 2017, Pahl told the trial court, "I have done some work on [defendant's case]. I have read the transcript and corresponded. I still need to do some follow-up investigation." On August 16, 2017, Pahl told the trial court, "I see in Mr. Medera's case it was a remand from the appellate court. I do need some additional investigation. There are some missing documents in the case." On February 6, 2018, Pahl declared, "I read the transcript. There still needs to be some additional work to be done."

¶ 24 On May 15, 2018, Pahl stated, "I have read the transcript and written to him about his issues, there's just a few loose ends." On August 9, 2018, Pahl claimed she needed additional time based on her case load.

¶ 25 On November 6, 2018, Pahl stated that she needed to do further investigation and that there were "some problems with a missing office file in this case which is complicating the resolution," but that she had read the transcripts and corresponded with defendant. On February 5, 2019, Pahl

did not appear. On February 22, 2019, Pahl did not appear again. The State informed the trial court it had left Pahl a message but had not heard from her or seen her.

¶ 26 On March 1, 2019, Pahl appeared and stated that she had failed to note defendant's court date in her calendar. She once again claimed she had read the record and corresponded with defendant, but "there [were] a few additional issues … the Public Defender file is missing, and I do need to do some research into how to address that." On May 10, 2019, Pahl once again stated that she had corresponded with defendant and read the record, but there were "a few additional matters" that needed further investigation. On August 9, 2019, Pahl provided the same excuse as the previous court date.

¶ 27 On November 20, 2019, Pahl did not appear and a third attorney from the Public Defender entered her appearance. She claimed, "I just received this file and I haven't reviewed it yet." On February 14, 2020, she stated, "I'm relatively new to this case. I have the record. I haven't began [*sic*] reading the record yet and I need a chance to do that."

¶ 28 On July 20, 2020, third postconviction counsel appeared and informed the trial court that she was retiring at the end of July and that she needed "a date for the new attorney to come in and look at the case."

¶ 29 On September 4, 2020, defendant's fourth postconviction counsel, Stephen Black (postconviction counsel), appeared and requested a continuance to begin reviewing defendant's file. On December 3, 2020, he informed the trial court that he was "still working through the appellate record."

¶ 30 On February 11, 2021, postconviction counsel asked the trial court for more time to review the record and "the file that had been compiled for [defendant]." On April 30, 2021, he stated that he had reviewed the record, but that he believed some volumes might be missing and he needed a

continuance to investigate. On July 9, 2021, he stated that he was "almost done reviewing the records and communicated with [defendant] a couple of times about some witnesses."

¶ 31 On November 5, 2021, more than two decades after defendant filed his petition and 15 years after counsel was first appointed, postconviction counsel informed the trial court that he had filed a certificate pursuant to Illinois Supreme Court Rule 651(c) (eff. July 1, 2017) and that he had no amendments to defendant's petition to offer. However, on the next court date on January 27, 2022, he told the trial court he would be withdrawing the certificate while he subpoenaed records for a traffic ticket dating back to 1994. On March 10, 2022, postconviction counsel stated he had filed another Rule 651(c) certificate, but he had not received confirmation of its filing through the e-filing system. The record reflects that this certificate was filed on May 19, 2022.

¶ 32 The State filed a motion to dismiss defendant's petition on January 9, 2023. Postconviction counsel did not file a response. At the argument on the State's motion to dismiss, postconviction counsel stated that defendant's petition contained first names of potential witnesses but no last names. He further stated that he completed investigations into those potential witnesses and a traffic ticket and that neither of those investigations yielded anything with which to amend defendant's petition.

¶ 33 On October 17, 2023, the trial court dismissed defendant's petition in a written order. More than 23 years after defendant filed his *pro se* petition, and 17 years after counsel was first appointed, the trial court ruled on the merits of defendant's petition. The record reflects that during this time, defendant was never brought to court to participate in the proceedings.

¶ 34 Defendant filed a notice of appeal on November 9, 2023.

¶ 35 II. ANALYSIS

¶ 36 Defendant argues both that (1) he presumptively received unreasonable assistance of counsel on account of the outrageous delay between the filing of his *pro se* petition and when postconviction counsel filed his Rule 651(c) certificate and (2) the record rebuts the presumption of reasonable assistance created by his Rule 651(c) certificate because he failed to amend defendant's petition to turn an uncognizable claim into a cognizable one and turn a procedurally barred claim into one for which the trial court could reach the merits. These two issues are not unrelated, but because the latter is simple and dispositive, we will address it first. And then we shall address the unacceptable delay that occurred in this case.

¶ 37 A. Rule 651(c) Certificate and Reasonable Assistance

¶ 38 The Act provides a mechanism by which a defendant may raise a collateral attack against his or her conviction based on a claim of actual innocence or where there was a substantial denial of his or her rights under the Constitution of the United States, the State of Illinois, or both. See 725 ILCS 5/122-1 *et seq.* (West 2000). The purpose of postconviction proceedings is to allow inquiry into constitutional issues involved in the original conviction and sentence that have not been, and could not have been, adjudicated previously on appeal. *People v. Buffer*, 2019 IL 122327, ¶ 12.

¶ 39 The Act sets out a three-stage process for the adjudication of postconviction petitions. *Id.* ¶ 45. At the second stage, the stage relevant to this case, counsel is appointed to represent the defendant, if necessary, and the State is permitted to file responsive pleadings. *People v. Edwards*, 197 Ill. 2d 239, 245-46 (2001); 725 ILCS 5/122-4, 122-5 (West 2000). At the second stage, the trial court must determine whether the petition and any accompanying documentation make a substantial showing of a constitutional violation. *Edwards*, 197 Ill. 2d at 246. The second stage

tests the legal sufficiency of the petition, and courts may not engage in fact-finding or address issues of credibility. *People v. Domagala*, 2013 IL 113688, ¶ 35. All well-pleaded facts not positively rebutted by the trial record are construed as true. *People v. Pendleton*, 223 Ill. 2d 458, 473 (2006). Thus, at the second stage, the question is whether the allegations, if proven at a third-stage hearing, would entitle a defendant to relief. *People v. Sanders*, 2016 IL 118123, ¶ 31.

¶ 40 There is no constitutional right to counsel in postconviction cases. *People v. Addison*, 2023 IL 127119, ¶ 19. Instead, the right to counsel is provided by statute and defendants are entitled only to a reasonable level of assistance, which is less than that afforded by the federal and state constitutions. *Id.* This distinction is rational because trial counsel plays a different role than postconviction counsel. *Id.* At trial, counsel acts as a shield to protect a defendant from being stripped of the presumption of innocence. *Id.* But defendants in a postconviction posture have already been stripped of the presumption of innocence and have generally failed to obtain relief on direct appeal. *Id.* Thus, postconviction counsel is meant not to protect a defendant from the prosecutorial forces of the State but to shape a defendant's claims into the proper legal form and present those claims to the court. *Id.*

¶ 41 The Act contemplates that the attorney appointed to represent an indigent defendant would consult with him either by mail or in person, ascertain his alleged grievances, examine the record of the proceedings at trial, and then amend the *pro se* petition so that it would adequately present the defendant's constitutional claims. *People v. Owens*, 139 Ill. 2d 351, 358-59 (1990). The Act cannot serve its purpose properly unless the attorney appointed to represent an indigent defendant ascertains the basis of his complaints, shapes those complaints into appropriate legal form, and presents them to the court. *Id.* at 359.

¶ 42 To ensure that defendants receive reasonable assistance of counsel, Rule 651(c) provides:

> "The record filed in that court 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 the trial, and has 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) (eff. July 1, 2017).

¶ 43 When postconviction counsel does not complete the few duties imposed by Rule 651(c), the limited right to counsel conferred by the Act becomes illusory. *People v. Schlosser*, 2017 IL App (1st) 150355, ¶ 44. Compliance with Rule 651(c) is mandatory, but once postconviction counsel files a Rule 651(c) certificate, a rebuttable presumption of reasonable assistance arises. *Addison*, 2023 IL 127119, ¶ 21. The defendant bears the burden of overcoming the presumption by showing that postconviction counsel did not substantially comply with the strictures of the rule. *Id.* A defendant may do so by, among other things, demonstrating that postconviction counsel did not make all the necessary amendments to the *pro se* petition. *Id.* This includes making amendments necessary to overcome procedural bars. *Id.* We review issues concerning the interpretation of a supreme court rule *de novo*. *Id.* ¶ 17.

¶ 44 Postconviction counsel's Rule 651(c) certificate stated that he had communicated with defendant by mail, examined the record of the proceedings, and investigated defendant's claims and found that his claims were adequately represented in the *pro se* petition. Given that the certificate created a rebuttable presumption of reasonable assistance, we must determine whether defendant rebuts that presumption. *Id.* ¶ 21.

¶ 45 Defendant argues that two possible amendments to his *pro se* petition rebut the presumption that postconviction counsel complied with Rule 651(c). He claims postconviction counsel could have amended defendant's sufficiency of the evidence claim by turning it into a claim that appellate counsel provided ineffective assistance on direct appeal by failing to argue the sufficiency of the evidence, and he argues that his due process claim regarding the absence of transcripts for closing arguments could have been reframed as an argument that trial counsel provided ineffective assistance by admitting defendant's guilt during closing arguments. We address these in turn.

¶ 46 *People v. Turner*, 187 Ill. 2d 406 (1999), is instructive as to defendant's first claim. In *Turner*, the defendant filed a postconviction petition alleging several issues that could have been raised on direct appeal and thus were waived unless they were framed as ineffective assistance of appellate counsel. Id. at 412-13. The supreme court reasoned that the issue of waiver could have been avoided by making a routine amendment framing the defendant's claims as ineffective assistance of appellate counsel. *Id.* at 413. For that reason, among others, the supreme court concluded that the defendant did not receive reasonable assistance. *Id.* at 413-14.

¶ 47 This case is meaningfully indistinguishable. As the trial court observed in its dismissal order, sufficiency of the evidence claims are not cognizable under the Act. *People v. Dixon*, 2022 IL App (1st) 200162, ¶ 45; *People v. Moore*, 60 Ill. 2d 379, 384 (1975). However, ineffective assistance of appellate counsel clearly has a constitutional dimension. See *Strickland v. Washington*, 466 U.S. 668, 685-86 (1984) (the right to the effective assistance of counsel flows from the sixth amendment of the United States Constitution (U.S. Const., amend. VI)). The form in which defendant presented his sufficiency of the evidence claim was improper within the context of the Act. Amending defendant's claim to allege ineffective assistance of appellate counsel was a

simple, obvious way of avoiding the fact that sufficiency of the evidence is not a cognizable claim under the Act.

¶ 48 This failure rebuts the presumption of reasonable assistance. Postconviction counsel's Rule 651(c) certificate asserted that defendant's "claims of deprivation of his constitutional rights are adequately represented in his *pro se* petition, and an amendment to that petition has not been prepared." But that was not true. Defendant's petition contained an uncognizable claim that, with a simple amendment, could have been turned into a cognizable claim.

¶ 49 The State argues that the potential amendment at issue here would be applying a constitutional label to a nonconstitutional claim. We disagree. Although the State relies on *People v. Talley*, 97 Ill. App. 3d 439 (1981), for this principle, that case is distinguishable. In *Talley*, the defendant's petition alleged that he was deprived of due process of law when he was convicted without sufficient evidence and that the admission of hearsay violated his rights under the United States Constitution's confrontation clause. *Id.* at 441.

¶ 50 This court noted that evidentiary issues do not attain constitutional stature merely by the application of a label. *Id.* at 443. The potential amendment in this case is different. The claim, ineffective assistance of appellate counsel, is indisputably constitutional in nature, and the action that appellate counsel allegedly failed to take was argue the sufficiency of the evidence on direct appeal. To accept the State's logic would mean that any ineffective assistance of counsel claim where the underlying attorney action being challenged was not of a constitutional nature, *e.g.*, failure to challenge an evidentiary ruling on appeal or the failure to investigate witnesses prior to trial, would not be a proper postconviction claim. We have no basis to narrow the Act in this way.

¶ 51 We observe that we may not concern ourselves with prejudice or the merits of a claim when analyzing postconviction counsel's compliance with Rule 651(c). *Addison*, 2023 IL 127119, ¶ 33.

"[W]hen postconviction counsel does not fulfill his or her duties under Rule 651(c), remand is required 'regardless of whether the claims raised in the petition had merit.' " *Id.* (quoting *People v. Suarez*, 224 Ill. 2d 37, 47 (2007)). "Our Rule 651(c) analysis has been driven, not by whether a particular defendant's claim is potentially meritorious, but by the conviction that where postconviction counsel does not adequately complete the duties mandated by the rule, the limited right to counsel conferred by the Act cannot be fully realized." *Suarez*, 224 Ill. 2d at 51.

¶ 52 We next turn to defendant's argument that postconviction counsel should have amended defendant's petition by reframing his due process claim about his missing trial transcripts into an argument that trial counsel provided ineffective assistance by admitting defendant's guilt during closing argument. This issue requires a discussion of the resolution of parts of defendant's direct appeal and what transpired during a bystander hearing that took place on June 30, 2003.

¶ 53 On direct appeal, defendant argued for the reversal of his conviction based on the absence of portions of his trial transcript in part because the trial court had refused to allow defendant to present the testimony of Richard English, trial counsel's investigator. While his direct appeal was pending, defendant filed his postconviction petition that claimed that he was denied due process of law due to his missing transcripts because trial counsel told the jury that defendant admitted to her that he was guilty. Defendant was not present at the bystander hearing, but the trial court noted that defendant submitted an affidavit that stated that the trial court disallowed trial counsel from presenting the testimony of English on the final day of trial.[2] Trial counsel's affidavit maintained that English did not testify and that closing arguments were made, but she had no recollection of their contents or any objections made. The State maintained that no witnesses were presented on

[2]Our order disposing of defendant's direct appeal noted that defendant's affidavit stated that trial counsel was disallowed from calling a witness and that he had no further recollection of the proceedings.

the final day of trial and that closing arguments took place. The trial court made a factual finding that on October 27, 1995, the defense rested without calling any witnesses, the State rested in rebuttal, the parties made their closing arguments, and the jury returned a verdict. It made no findings as to whether defendant requested to call English.

¶ 54 This court rejected defendant's direct appeal argument regarding the missing transcripts. *Medera*, slip order at 9-29. When the trial court dismissed defendant's petition at the second stage, it observed that defendant's claim that he was entitled to a new trial based on his incomplete transcripts was barred by *res judicata*. It also noted that defendant's claims about what trial counsel said during closing arguments were refuted by the record.

¶ 55 It is accurate to say that amending defendant's petition to reflect an ineffective assistance of trial counsel claim would have avoided the procedural bar that is *res judicata*. But that alone does not rebut the presumption of reasonable assistance afforded to postconviction counsel. The bystander hearing took place after defendant had already filed his postconviction petition alleging that trial counsel admitted defendant's guilt during closing arguments. And yet, none of the involved attorneys or the trial court had any recollection of trial counsel making such a statement. Even defendant's own affidavit stated he had no recollection of the proceedings beyond the allegation that the trial court prevented trial counsel from calling a witness. *Id.* at 9. Thus, the record appears to rebut defendant's factual claim that trial counsel admitted defendant's guilt, and postconviction counsel was not required to amend a petition to pursue a frivolous claim. See *People v. Greer*, 212 Ill. 2d 192, 205 (2004). However, defendant's point that we do not know what defendant understood about the purpose of the bystander hearing or the manner in which he was prompted to supply an affidavit is a reasonable one.

¶ 56 Even if the contents of the bystander hearing do not affirmatively rebut defendant's claim, we are nevertheless unpersuaded that postconviction counsel provided unreasonable assistance in this regard. Defendant bears the burden of rebutting postconviction counsel's Rule 651(c) certificate. *Addison*, 2023 IL 127119, ¶ 21. But his argument presumes that there was factual support for such an amendment to be made in this case. No factual support for this particular claim of ineffective assistance of counsel appears in the record, and we have no way of knowing whether postconviction counsel searched for and was unable to obtain satisfactory factual support for such an amendment. Defendant asserts that, at a minimum, postconviction counsel could have obtained an affidavit from defendant about what transpired during closing arguments. We likewise do not know if postconviction attempted to do so and, if he did, whether there were additional considerations that precluded such an amendment. The record simply provides no insight. Thus, this issue standing alone does not persuade us that postconviction counsel provided unreasonable assistance.

¶ 57 However, that does not detract from postconviction counsel's failure to amend defendant's sufficiency of the evidence claim into one cognizable by the Act. Accordingly, we conclude that postconviction counsel did not provide reasonable assistance based on his failure to make a simple amendment to defendant's *pro se* petition, which rebutted postconviction counsel's Rule 651(c) certificate that asserted defendant's claims were adequately represented. On that basis, defendant's case must be remanded for further second-stage proceedings.

¶ 58 B. Delay

¶ 59 Our conclusion that defendant did not receive the reasonable assistance of counsel is only compounded and illustrated by the incomprehensible delay in this case.

¶ 60 Let us make one thing abundantly clear. This decision is not an attack on dedicated public servants who toil dutifully with excessive caseloads and far fewer resources than they deserve. Those individuals are a credit to our system of justice, trying their best to ensure that the actual administration of justice lives up to the lofty ideals and promises we hold so dearly. This case is something else entirely. This case diminishes the principles that so many others have sworn to defend—principles on which our justice system depends.

¶ 61 In *People v. Anderson*, a case that we recently reversed and remanded for noncompliance with Rule 651(c), we wondered, "[H]ow did it take 2,849 days for postconviction counsel to do nothing?" 2025 IL App (1st) 221418-U, ¶ 48. In this case, Pahl made her first appearance on September 12, 2006. Postconviction counsel filed his second Rule 651(c) certificate on May 19, 2022. We now restate with bewilderment: how did it take four attorneys 5,728 days to do nothing?

¶ 62 We focus on attorney Pahl as her representation encompassed the vast bulk of the delay. Each time Pahl appeared in court, she provided one of the same explanations repeatedly—for 13 years. For the first three and a half years, Pahl claimed she was reading defendant's transcripts—the transcripts of defendant's trial and sentencing that we have access to in the record numbered fewer than 900 pages.

¶ 63 Pahl's explanation then shifted to her need to perform an investigation. She eventually identified that she would need to request trial counsel's file, after five years, which made sense given defendant's claims about inadequate investigation by trial counsel. Soon after, she claimed she could not locate the file and needed some additional time to "wrap up" her work on defendant's case. A year later in July 2012, she claimed she was attempting to work through her case load so that she would have a chance to "look at" defendant's case. For the next seven years she largely recycled the same set of excuses: she had a few issues left to investigate, a few matters that required

follow-up, and a few loose ends to tie up. Seven years after discovering that trial counsel's file was missing, she told the trial court she needed to do some research on what to do about that missing file. Even 10 years into her representation of defendant, as though it was new information to her, she was still stating in open court that defendant's case had been remanded.

¶ 64 It is impossible to conceive of circumstances that would justify 15 years' worth of research and investigation on a postconviction case. Particularly when none of the attorneys involved filed even the slightest amendment to defendant's petition. The fact that such an extensive delay did not produce any appreciable results is alarming and disconcerting.

¶ 65 Just as troubling as how long it took four attorneys to do nothing on this case is how long the trial courts permitted this case to languish. The only time a judge presiding over these proceedings offered any challenge to the delay was on May 2, 2013, when the trial court stated, "I guess I will presume that length of time is necessary for the nature of the case." Pahl replied, "Yes, Your Honor," which was apparently enough to dispel any concern.

¶ 66 Defendant compares this case to *People v. Kelly*, where the defendant filed a *pro se* petition in 1998. 2012 IL App (1st) 101521, ¶ 6. Two years later, appointed counsel filed a supplemental petition that raised a flawed and nonmeritorious claim. *Id.* ¶ 9. Appointed counsel was given leave to withdraw, and the defendant hired private counsel. *Id.* ¶ 10. After four years, in September 2007, private counsel had not filed anything, and the defendant sought the appointment of new counsel. *Id.* ¶ 12. In April 2008, counsel acknowledged that he had not visited the defendant and that he had not filed anything on the defendant's behalf, but he asserted that visits were unnecessary and that the delay was due to the difficulty of the issues raised by the defendant. *Id.* ¶ 13. In July 2009, counsel filed an amended petition. *Id.* ¶ 15. On May 21, 2010, the trial court dismissed the defendant's petition. *Id.* ¶ 19. On appeal, the defendant argued he did not receive the reasonable

assistance of counsel, in part because of the 12-year delay. *Id.* ¶ 26. We agreed, stating that the "12-year period that elapsed from petitioner's filing of his *pro se* petition in July 1998 to the circuit court's dismissal of the amended petition in May 2010 illustrates the unreasonable representation provided by both appointed and privately retained counsel," in addition to the failures of counsel to shape the defendant's claims into the proper form. *Id.* ¶ 40.

¶ 67 This case similarly shares a failure of postconviction counsel to put defendant's claims in the proper legal form. Furthermore, defendant's point that there are real consequences to inordinate delays is well taken. With each passing year, evidence becomes harder to obtain. Witnesses move or die. Documents, such as trial counsel's file, are lost or destroyed. Memories fade. Relatedly, defendant argues, and we agree, that appointed counsel in postconviction cases is not immune to the ethical obligations of an attorney. Our professional rules demand that attorneys act with "reasonable diligence and promptness in representing a client." Ill. R. Pro. Conduct (2010) R. 1.3 (eff. Jan. 1, 2010). There was nothing diligent or prompt about these proceedings.

¶ 68 Twenty-three years defendant waited to be heard on the merits of a six-page postconviction petition. Our review of the record does not indicate any of that delay is attributable to defendant himself. He suffered one delay because of the trial court failing to rule on his petition within the statutory 90-day period, which forced the additional delay of an appeal. Then he experienced the staggering delay created by the inaction of postconviction counsel. We cannot emphasize enough the amount of time that passed in this case. "[T]here is merit to the cliché that justice delayed is justice denied." (Internal quotation marks omitted.) *Daewoo International v. Monteiro*, 2014 IL App (1st) 140573, ¶ 90.

¶ 69 It is trivial to find other examples of cases where postconviction proceedings were subject to incredible delays. In *Anderson*, the defendant waited nearly a decade for the resolution of his

petition. *Anderson*, 2025 IL App (1st) 221418-U, ¶¶ 14-23. In *People v. Triplett*, the defendant filed his petition in October 2007, and his petition proceeded to an evidentiary hearing on October 10, 2024. 2026 IL App (1st) 250283-U, ¶¶ 18-21. The defendants did not challenge the delays with unreasonable assistance. We refer to them not for their holdings, as they have no mandatory authority, but only to illustrate the pervasiveness of this problem. We must not permit this to become normal, and if it is, we must disabuse ourselves of that notion.

¶ 70 The Act is a safeguard. Its entire *raison d'être* is to permit inquiry into constitutional issues that escaped review on direct appeal. See *Buffer*, 2019 IL 122327, ¶ 12 ("The purpose of the proceeding is to allow inquiry into constitutional issues involved in the original conviction and sentence that have not been, and could not have been, adjudicated previously on direct appeal."). Once a defendant has been convicted of a crime and his conviction has been affirmed, the Act is generally the only mechanism that can turn previously unreviewed constitutional deprivations or new evidence into a new trial or an exoneration; it is *the* tool a defendant has to attack his conviction based on errors which transpired outside the record, *e.g.*, an attorney's lack of preparation, failure to investigate witnesses, or conflicts of interest. In this way, the Act is a profound and essential mechanism that defendants must have to correct injustices. One would not be able to discern that from the record before us. Instead, the postconviction proceedings here were treated with a carelessness that belied their gravity. As we have said, we express no opinion about the merits of defendant's petition at this point. But we are dismayed by the possibility of defendant, or any other defendant, enduring such delays all the while having a claim that could yield him a new trial or result in his release from incarceration. Combined with postconviction counsel's failure to make necessary amendments to overcome a procedural bar, we can reach no conclusion but that defendant did not receive the reasonable assistance of counsel. At oral argument, defendant

asked us to instruct the parties and the trial court to avoid further unwarranted or unnecessary delay and encourage the Public Defender to assign the case to an attorney who can prioritize defendant's case. We believe those are reasonable requests. Upon remand, it would behoove the trial court and the parties to proceed without delay.

¶ 71 The 17-year delay from the date postconviction counsel was appointed to the date the trial court granted the State's motion to dismiss is unacceptable. While we are cognizant of the increasing caseloads and demands on the court and counsel, the court and the parties must do better to resolve postconviction petitions in a timely fashion.

¶ 72 III. CONCLUSION

¶ 73 For the reasons stated, we reverse the judgment of the trial court and remand defendant's case for further second-stage proceedings with assignment of new counsel to make any necessary amendments.

¶ 74 Reversed and remanded.

Decision Under Review:	Appeal from the Circuit Court of Cook County, No. 94-CR-17605; the Hon. William G. Gamboney, Judge, presiding.
Attorneys for Appellant:	James E. Chadd, Douglas R. Hoff, and Meredith N. Baron, of State Appellate Defender's Office, of Chicago, for appellant.
Attorneys for Appellee:	Eileen O'Neill Burke, State's Attorney, of Chicago (John E. Nowak, Zachary M. Slavens, and Amy McGowan, Assistant State's Attorneys, of counsel), for the People.