

132067

No. 132067

IN THE

SUPREME COURT OF ILLINOIS

PEOPLE OF THE STATE OF ILLINOIS,	)	Appeal from the Appellate Court of
	)	Illinois, No. 1-23-0583.
Respondent-Appellee,	)	
	)	There on appeal from the Circuit Court
-vs-	)	of Cook County, Illinois , No. 95 CR
	)	28516 (02).
	)	
MELVIN HAMMOND,	)	Honorable
	)	Geraldine D’Souza,
Petitioner-Appellant.	)	Judge Presiding.
	)	

BRIEF AND ARGUMENT FOR PETITIONER-APPELLANT

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NATURE OF THE CASE

Petitioner-Appellant Melvin Hammond appeals from a judgment granting the State's motion to dismiss his initial petition for post-conviction relief at the second stage of proceedings.

An issue is raised concerning the sufficiency of the post-conviction pleadings.

ISSUE PRESENTED FOR REVIEW

Did post-conviction counsel violate Rule 651(c) where he failed to attach the supporting evidence and to make other amendments necessary to adequately present Melvin Hammond's post-conviction claims?

STATUTE AND RULE INVOLVED

725 ILCS 5/122-2. Contents of Petition (eff. Jan. 1, 1964) (In Relevant Part)

*** The petition shall have attached thereto affidavits, records, or other evidence supporting its allegations or shall state why the same are not attached. ***

Illinois Supreme Court Rule 651(c) (eff. July 1, 2017) (In Relevant Part)

*** The record filed . . . 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 contentions of constitutional rights, has examined the record of the proceedings at the trial, and has made any amendments to the petition filed *pro se* that are necessary for an adequate presentation of petitioner's contentions.

STATEMENT OF FACTS

Based on events alleged to have occurred between January 1 and September 20, 1995, Melvin Hammond and his co-defendant, Michelle Tate, were convicted in separate proceedings of the first degree murder of 13-month-old Diamond Shaw in Burnham, Illinois. (C. 90-94) The indictment alleged that Tate (Diamond's mother) and Hammond (Tate's boyfriend) repeatedly struck Diamond with their hands and with a belt. (C. 90-94) After being found guilty at a jury trial, Hammond was sentenced to life in prison, but later given a new sentencing hearing at which the court imposed a 75-year sentence.¹ (C. 313, 374-77, 508)

The present appeal stems from the second-stage dismissal of Hammond's initial *pro se* petition, filed in 2007. In 2010, the circuit court granted the State's motion to dismiss this petition at the second stage, after the attorney appointed to assist Hammond on his petition withdrew from the case. (C. 555-62, 582; SUP R. 802-02, 820-25) The appellate court reversed that ruling and remanded for new second-stage proceedings, finding that post-conviction counsel had not complied with Illinois Supreme Court Rule 651(c) before her withdrawal. *People v. Hammond*, 2012 IL App (1st) 101096-U, ¶20-29. On remand, new counsel was appointed. Hammond filed additional *pro se* supplements, and appointed counsel filed an amended petition incorporating Hammond's own *pro se* petitions and listing their claims. (C. 789-95) The circuit court granted the State's motion to dismiss on March 10, 2023. (C. 801-12; R. 187-88)

Relevant Pre-Trial Proceedings

Prior to Hammond's jury trial, trial counsel obtained fees for an expert regarding the cause of Diamond's death. (C. 120-24) Counsel later filed a motion to qualify Kim L. Reilly as an expert in anthropology and osteology, stating that Reilly would testify that the forensic pathologist who performed Diamond's autopsy misidentified normal suture lines as a skull

¹ Tate pled guilty during her trial and received a 25-year sentence. (C. 517)

fracture. (C. 191) Just before trial, counsel said the defense would not be using their expert, as counsel believed the State would call a witness who also believed the forensic pathologist who performed Diamond's autopsy was mistaken about the skull fracture. (SUP R. 1139-40)

Relevant Jury Selection

During *voir dire*, juror Heidi Lieak indicated that she worked in safety at a medical practice. In that role, she frequently employed off-duty officers from the Burnham Police Department. She knew Investigator Richard Barber, a State witness, but did not believe anything about that relationship would make her unfair. (SUP R. 1361-65 V2) When asked if anything about this case itself that would keep her from being impartial, Lieak answered, "I have seen abused children come through the emergency room." The judge asked her, "As a result of your work at the hospital and being exposed to that, is there anything about this type of case and your prior involvement with your work that would prevent you from being fair and impartial in this case?" She answered, "No." (SUP R. 1368-69 V2)

Trial

Burnham Police Chief J.D. Crull testified he responded to a 911 call at 8:59 a.m. on September 20, 1995, regarding a baby not breathing at 14401 South Bensley Avenue. (SUP R. 1420 V2) When Crull arrived, Hammond and Tate were waiting at the door. Tate led Crull to the bedroom, where Diamond was laying on the bed. Crull performed CPR on Diamond until paramedics arrived and took her to the hospital. (SUP R. 1421-26 V2) Crull then drove Tate to the hospital, while Hammond drove himself. During the ride to the hospital, Tate told Crull that Diamond had no medical problems. She thought Diamond may have been moving or gurgling at 7:00 a.m., observed Diamond with her eyes open at 8:00 a.m., and called 911 when she saw Diamond unresponsive. (SUP R. 1426-27 V2) At the hospital, Dr. Prakash Rattan treated Diamond, who did not have a pulse and was not breathing. She was pronounced dead at 9:21 a.m. (SUP R. 1450-56 V2)

Dr. Kim performed Diamond's autopsy, but he did not testify at trial. Dr. Nancy Jones reviewed Dr. Kim's records and testified instead. (SUP R. 1479-85 V2) According to Dr. Jones, Dr. Kim's records showed Diamond suffered blunt trauma throughout her body and head; some recent, some old, and some healing. (SUP R. 1487-89 V2) She had bruises and blood on her brain, and seven instances of bleeding under the scalp, indicating recent trauma. (SUP R. 1497-98 V2) Dr. Kim thought Diamond suffered a skull fracture, but Dr. Jones disagreed and believed normal suture lines had separated and created a diastal fracture, which occurred from the pressure the brain's swelling placed on Diamond's skull. (SUP R. 1501-02, 1512-13 V2) Dr. Jones opined that Diamond died as a result of multiple injuries she received due to blunt trauma. Her head injuries caused her brain to swell and stopped her breathing. (SUP R. 1502-03, 1508-12 V2) Dr. Jones opined that the head injuries occurred between one and twelve hours of Diamond's death, and also said that if pressed she would say they occurred within six hours prior to death. (SUP R. 1523-24 V2) She explained that Dr. Kim had found rigor mortis all over Diamond's body, but he had not explained in his report the extent to which the rigor mortis was present. (SUP R. 1514-15 V2)

After Diamond was pronounced dead, the police asked Tate and Hammond to go to the station for questioning. They both agreed; the police drove Tate in their car, while Hammond took his own car. (SUP R. 1433-34 V2) At the station, Investigator Richard Barber obtained consent from Tate to search the apartment and then retrieved the apartment keys from Hammond. (SUP R. 1540-41 V2) During that search, Barber recovered a washcloth, red-stained shoestrings, a red-stained sock, a car seat and cover, and a man's belt with a buckle. (SUP R. 1541-44 V2) Testimony presented later via stipulation indicated that blood on the sock and belt buckle matched Diamond's DNA, and that a mixture of blood on the car seat cover and shoelaces matched Diamond and Hammond. (SUP R. 1588-91 V2)

During the afternoon on September 20th, Investigator Barber spoke with Hammond.

According to Barber, Hammond said that Tate and Diamond moved in with him five months earlier and that he and Tate both occasionally “whoop[ed]” Diamond. Hammond used his hand, while Tate used a belt. They would also tie Diamond’s hands to the car seat where she slept. (SUP R. 1544 V2)

Assistant State’s Attorney John Coyne testified that he spoke to Hammond around 5:50 p.m. on September 21, 1995, and obtained Hammond’s consent to allow Coyne to prepare a handwritten statement. (SUP R. 1596-98 V2) The handwritten statement indicated that Hammond was 25 years old in September of 1995, and that Tate and Diamond moved in with him in April of 1995. (SUP R. 1619 V2) Hammond and Tate had discussed getting married, and Hammond accepted the role of Diamond’s father, but Tate disciplined Diamond by “whoop[ing]” her. (SUP R. 1619-20 V2) During the first six weeks they lived together, Tate whooped Diamond with her hands, hitting Diamond’s legs, arms, and butt. After those six weeks, they agreed Hammond would whoop Diamond as well. From the middle of May onward, Hammond whooped Diamond about eight times a month for crying, taking off her diaper, or jumping off the bed. Hammond would hit Diamond’s bare butt with his hand for two or three minutes. (SUP R. 1620 V2) When he tied her wrists, it was so she would not scratch her face. (SUP R. 1623 V2) In July of 1995, Tate began to whoop Diamond on the legs and the butt with a belt, causing Diamond to receive cuts. When Hammond would later whoop Diamond with his hand, her cuts would bleed. (SUP R. 1620-21 V2)

The statement indicated further that Hammond came home at 1:30 a.m. on September 30, 1995. At that time, Tate was in bed, while Diamond was in her car seat where she slept. Hammond could not sleep because Diamond was crying. (SUP R. 1621-22 V2) When Hammond and Tate told Diamond to go to sleep, she would initially calm down, but then start crying again. Hammond pulled off Diamond’s diaper, whooped her, and put her back in the seat, at which time he thought she hit her head. Later, Hammond heard Diamond talking, crying,

and mumbling. Tate told Hammond to take Diamond into the living room, so Hammond placed her there and went back to bed. When Diamond continued to cry and mumble, Tate said she was going to whoop Diamond. Tate and Hammond then went to the living room, where Hammond took Diamond out of the car seat and put her on the floor. At that time, Diamond hit her head. Hammond took off Diamond's diaper, whooped her, and then went back to bed. When he woke up at 8:15 am, he noticed something was wrong with Diamond, and Tate called 911. (SUP R. 1622-23 V2)

The defense presented the testimony of six witnesses regarding Hammond's reputation for being a peaceful, non-violent person and a good caregiver. (SUP R. 1693-1761 V2) Latisha Motley, the mother of Hammond's 10-year-old son, testified Hammond was a good father who he was never violent and spent significant time caring for his son. (SUP R. 1693-97 V2) Carolyn and Mark Hall, Hammond's relatives, testified that Hammond's mother was severely disabled with cerebral palsy and that Hammond cared for her daily. (SUP R. 1711-15, 1741-47 V2) Isaac Bracey, Hammond's co-worker, also testified Hammond cared for his mother daily, despite sometimes working seven days a week. (SUP R. 1723-33 V2) Yolanda Redman testified Hammond was her caregiver when she was 16 years old, taking her to school and supervising her; he was peaceful and non-violent. (SUP R. 1755-60 V2)

Mark Hall also testified that when he called Hammond's mother between 12:00 and 1:00 a.m. on September 20, 1995, Hammond answered the phone. (SUP R. 1743-44 V2)

Hammond also testified at trial and denied causing Diamond's death or ever hitting her with such force as to cause injury. (SUP R. 1835-39 V2) On occasion, he had spanked her lightly to keep her from jumping off the bed or hurting herself. (SUP R. 1861-62, 1884 V2) Hammond explained that he met Tate in 1995, while she and Diamond were living with Hammond's cousin, Rosetta. Tate and Diamond moved in with Hammond in June of 1995,

when Rosetta's lease expired. (SUP R. 1773-74 V2) Hammond told Tate she would have to care for Diamond, because Tate did not work and Hammond was rarely home. (SUP R. 1770-79 V2) Hammond and Tate were romantically involved, but the living arrangement was supposed to be temporary, a means for Tate to get back on her feet until Hammond moved in with his mother to take care of her. (SUP R. 1771, 1773-78, 1837 V2)

About two weeks after Tate and Diamond moved in, Hammond saw Tate beat Diamond with a belt. (SUP R. 1779-82 V2) He told Tate to stop, and she agreed. A few weeks later, in July, he again saw Tate beating Diamond with a belt. (SUP R. 1782-87 V2) Hammond told Tate that she and Diamond had to leave and dropped them off at Tate's friend's house, but later allowed them to return. (SUP R. 1784-89 V2) On subsequent occasions, he observed whip marks on Diamond's arms and legs; he made Tate leave again in September. He allowed them to return again because he cared about Diamond. (SUP R. 1792-97 V2)

On September 19, 1995, Hammond worked until 5:00 p.m. He then spent a few hours with his son and visited his mother until 1:00 a.m. the next day. After leaving his mom's house, he visited friends and returned home around 3:00 a.m. When he came home, Tate was sitting up in bed and Diamond was in her car seat, crying and facing the wall. (SUP R. 1800-08 V2) Hammond took Diamond out of the car seat and held her, but Tate told him Diamond could not sleep in the bed, so Hammond returned her to the car seat. Hammond did not notice any marks on Diamond at that time or see that she was injured, but it was dark. (SUP R. 1809-11 V2) Hammond started to go to the living room to sleep, but Tate told him to stay in the bedroom. Hammond asked Tate if she fed Diamond, and Tate said her bottle was broken. Tate angrily told Hammond to put Diamond in the living room, and Hammond complied. (SUP R. 1815-17 V2)

When Diamond continued to cry, Hammond told Tate, "Man, something is wrong

with her.” Tate said Diamond better be quiet and that she was going to whoop her. (SUP R. 1817-18, 1822-23 V2) Hammond walked into the living room, and Tate followed. Hammond took Diamond from the car seat and laid her on the carpeted floor. He checked her diaper, which was dry, but she continued whining, so he patted her bottom to soothe her. He then returned Diamond to the car seat, and he and Tate went to sleep in the bedroom. (SUP R. 1818-21 V2) He awoke later, heard Diamond crying, and saw Tate coming into the bedroom. (SUP R. 1821-22 V2) At 8:00 a.m., Tate woke Hammond and they went to the living room. Diamond’s eyes were open, but she was unresponsive. Hammond told Tate to call 911, as he tried to revive Diamond with a wet towel and with CPR. (SUP R. 1824-25 V2)

At trial, Hammond acknowledged his written statement, but also testified he did not read it before signing it. He explained that when he spoke to the police and to ASA Coyne, he was not focused on their questions because he was upset about Diamond. (SUP R. 1841-48, 1857-60 V2) Hammond denied that he ever tied Diamond to her chair. (SUP R. 1868 V2) He admitted that he occasionally tied socks to her hands to prevent her from scratching her face. (SUP R. 1834, 1838 V2)

The parties stipulated that Diamond was admitted to the hospital on December 9, 1994, before she and Tate lived with Hammond. She was diagnosed with near drowning, pneumonia, and child neglect. She had been left unattended by Tate in a tub and was unresponsive when Tate returned. At that time, Diamond was otherwise well-nourished and had normal neurology. (C. 209; SUP R. 1885-60 V2)

Initial Sentencing Hearing, Direct Appeal, and Re-Sentencing

At Hammond’s initial sentencing hearing, the trial court found him eligible for the death penalty, but also found mitigating factors present and thus imposed a mandatory sentence of life in prison. (C. 313; SUP R. 2072, 2079-80 V2) On appeal, appellate counsel raised a

single issue: that the mandatory life sentencing statute violated the single subject clause. The appellate court agreed and vacated Hammond's sentence. *People v. Hammond*, 1-99-3337 (1st Dist. 2001) (Rule 23 Order). (C. 374-77) At re-sentencing, the court imposed a 75-year sentence, which the appellate court affirmed. *People v. Hammond*, No. 1-03-0823 (1st Dist. 2006) (Rule 23 Order). (C. 508, 513-34)

Post-Conviction Petition and Initial Appeal

On July 30, 2007, Hammond filed his initial *pro se* petition, the subject of this appeal. (C. 535-49) On February 22, 2008, the circuit court advanced the petition to the second stage and appointed counsel. (SUP R. 756, 769) On December 11, 2009, post-conviction counsel filed a 651(c) certificate and a motion to withdraw, asserting she could find no issues to allege a substantial violation of a constitutional right. (C. 555-62; SUP R. 802-03) After the court granted counsel's motion to withdraw, Hammond filed a supplemental petition on January 2, 2010. (C. 564-79) The State filed a motion to dismiss both petitions. On February 26, 2010, Hammond appeared *pro se* and the court granted the State's motion. (C. 582; SUP R. 812-26)

On appeal, the appellate court held that post-conviction counsel did not comply with Rule 651(c) before withdrawing and therefore remanded for new second-stage proceedings. *People v. Hammond*, 2012 IL App (1st) 101096-U, ¶¶ 22-25.

Remanded Second-Stage Proceedings

The appellate court's mandate was received by the circuit court on July 26, 2012. (C. 51) On August 19, 2013, Hammond filed a "revised" *pro se* post-conviction petition, in which he raised the issues from his 2007 and 2010 petitions, along with new claims. (C. 610-76) At the next court date, appointed counsel—Assistant Public Defender Foster—indicated she had not yet worked on the case, but had spoken to Hammond on the phone. (R. 8-10) Foster was out of town on the next scheduled court date, could not make it to the court date after

that, and then indicated in June and April of 2014 that she was still reading the transcripts. (R. 12-21) In August of 2014, Foster filed a Rule 651(c) certificate, indicating she would proceed straight to argument on Hammond's *pro se* filings. (C. 687; R. 25)

On October 10, 2014, the State filed a motion to dismiss Hammond's petition. (C. 689-98) On July 10, 2015, APD Foster indicated she would file a written response, and the matter was set for argument on September 25, 2015. (R. 30-46) Foster was not able to appear on that date, or on January 8, 2016. (C. 48-52) On June 25, 2016, Foster said she would now proceed on all the prior *pro se* motions filed by Hammond. (R. 61) The State then indicated that it needed more time because it had believed that only the *pro se* motion filed in 2013 was at issue. (R. 62) In July of 2016, the court ordered Foster to file a new post-conviction petition to address all of the issues raised by the prior petitions, and the State withdrew its prior motion to dismiss. (R. 67-68)

When the cause was called again in October 14, 2016, APD Foster indicated that she was behind in another case. (R. 71) On December 16, 2016, Foster was ill. (R. 74) In January of 2017, Foster indicated that Hammond had stopped communicating with her, so the parties decided to bring Hammond into court. (R. 77) On the next court date, when Hammond was present, Foster said she was prepared to go forward on all three petitions. (R. 84) The State reiterated that it did not know what petitions were being advanced, at which time the court ordered a continuance to see how counsel wanted to proceed. (R. 84) Foster then asked the court to confirm if Hammond agreed with her filing an amended petition and a 651(c) certificate. (R. 84) Hammond responded that he did not know what that consisted of, but he trusted his attorney. (R. 85)

Over the next year, APD Foster obtained additional continuances while stating she was working on an amended petition. (R. 88-98) On April 13, 2018, Foster reported that she

had finished the amended petition, aside from some clerical tweaks. (R. 102) Then, on May 11, 2018, Foster stated: “Because my college [*sic*] has filed a 651-C petition [*sic*], I am asking for a two month date that’s convenient for the Court.” (R. 105) In response, the State and court agreed a new Assistant Public Defender would have to be assigned. (R. 105)

A new Assistant Public Defender, Teague, appeared on September 14, 2018. (R. 111-12) Teague obtained continuances until September 13, 2019, at which time his colleague appeared and said Teague was on medical leave. (R. 114-25) On December 20, 2019, Teague said he had been to the Department of Corrections and hoped to start writing something soon. (R. 128) In February of 2020, Teague said he was attempting to obtain the trial file; on August 28, 2020, Teague said he had received the file from trial counsel and was in the process of having that copied before the “shut down.” (R. 130-39)

In February of 2021, Assistant Public Defender Brown appeared on the case. In February and July of 2021, Brown said he had reviewed a significant portion of Hammond’s file. (R. 148, 154) In September of 2021, Brown said he was trying to “wrap up this matter,” but had not been able to speak to Hammond. He asserted, “I think once I am done speaking to him about his claims – and I did file my 651(c).² I don’t know if you want to give it a shorter date for that purpose.” (R. 158) In December, Brown said he still needed to read material from the trial file. (R. 162) On April 12, 2022, Hammond filed another *pro se* supplemental petition. (C. 775-80) On May 27, 2022, Brown said he had completed an amended petition and was waiting on a verified affidavit from Hammond. (R. 165)

APD Brown filed an amended petition and a Rule 651(c) certificate on June 2, 2022. (C. 789-800) The amended petition was seven pages long, followed by a signature page. (C. 789-96) In the amended petition, Brown provided a procedural history of the case and stated

² No prior Rule 651(c) certificate filed by Brown appears in the record. Nor does the memorandum of orders reflect any such filing. (C. 66-67)

that the amended petition was inclusive of the *pro se* petitions filed by Hammond in 2007, 2010, 2013, and 2022. (C. 789-90) Brown then listed what he termed to be a “summation of the issues,” which consisted of a list of the headings of 37 claims. Those claims contained no legal or factual argument, and no legal or record citations. (C. 790-95) The same day, Brown filed a “Supplemental Filing of Verified Affidavit in Support of Petition for Post-Conviction Relief,” in which Brown said Hammond had not provided a verified affidavit to the four *pro se* petitions, which was now attached. (C. 797-99)

On June 15, 2022, the State filed a motion to dismiss the amended petition. (C. 801-12) Within that motion, the State provided its version of the facts as well as legal argument on the standards governing post-conviction petitions and on the claims in Hammond’s petition. (C. 801-12) The State also made arguments on why Hammond’s claims lacked merit, including that “[t]here is nothing attached to any of the petitions” to support the claims regarding witnesses who should have been called at trial. The State asserted that the failure to attach that documentation justified the dismissal of the petition in and of itself. (C. 807) The State also argued, with supporting case law, that the mere “list of counsel’s failures, unsupported by argument or authority” was inappropriate and could not be considered by the court, and that “[n]owhere in this post-conviction petition is it shown how petitioner was prejudiced by any of these alleged deficiencies of trial counsel.” (C. 808-09, 810)

Following the State’s filing of the motion to dismiss, APD Brown obtained multiple continuances. (R. 169-79) On September 16, 2022, Brown said he had read the State’s motion and would rest on the amended petition. (R. 4-5)

At a hearing on March 10, 2023, the State reiterated the points in its motion. (R. 184-85) APD Brown stated that he “filed an amended petition in June of 2022 attempting to consolidate all [of Hammond’s] claims into one document, and also adopting any previous claims made

in [Hammond's] four petitions." He then rested "on the claims presented in Mr. Hammond's petitions as well as my amended petition and response to the State's motion to dismiss."³ (R. 185) Counsel argued that he "believe[d] the claims presented in the petitions state a substantial showing of deprivation of constitutional rights," both individually and cumulatively. (R. 185-86) He also responded to the State's argument that Hammond had forfeited his claims of ineffective assistance of trial counsel, noting that Hammond had also alleged ineffective assistance of appellate counsel. (R. 186)

The circuit court granted the State's motion to dismiss the petition. It noted that while a "laundry list" of allegations had been presented: (1) no prejudice had been shown; (2) trial counsel's decisions were matters of trial strategy; (3) Hammond did not show any of the claims omitted on direct appeal stood a reasonable chance of success; and (4) his other claims were not supported. (R. 187-88)

On appeal from this dismissal, Hammond argued that: (1) he made a substantial showing of ineffective assistance of counsel on direct appeal for failing to challenge arguments made by the State and his attorney at trial; and (2) post-conviction counsel on remand violated Rule 651(c) by, *inter alia*, failing to attach evidence to support Hammond's claims and failing to allege *Strickland* prejudice for Hammond's claims of ineffective assistance of counsel.

The Appellate Court of Illinois, First Judicial District, rejected Hammond's arguments and affirmed the second-stage dismissal of his post-conviction petition. *People v. Hammond*, 2025 IL App (1st) 230583-U. Regarding Hammond's claim that post-conviction counsel violated Rule 651(c), the court reasoned, "the reviewing court may reasonably presume that postconviction

³ In fact, there was no filed response to the State's motion to dismiss: this is confirmed by the memorandum of orders (C. 68) and by counsel's earlier statement after reviewing the State's response that he would rest on the amendment he had filed and requesting a date for argument. (R. 5)

counsel made a good faith effort to obtain evidence supporting the postconviction claims but was unable to do so.” *Id.* ¶ 100. It also held that post-conviction counsel did not need to allege *Strickland* prejudice because he incorporated Hammond’s own *pro se* petitions into his amended petition. *Id.* ¶ 110. This Court granted leave to appeal.

ARGUMENT

Melvin Hammond’s post-conviction counsel violated Illinois Supreme Court Rule 651(c) by failing to present necessary documentation in support of his claims, or to explain its absence, and in failing to show prejudice.

Summary of the Argument

Post-conviction counsel in this case filed an amended petition and argued that Melvin Hammond’s post-conviction petitions contained substantial showings of numerous constitutional violations in his conviction and sentence for the murder of Diamond Shaw. (C. 789-800; SUP R. 756, 759) As just one example, post-conviction counsel asserted that Hammond made a substantial showing that trial counsel ineffectively failed to call an expert who could have rebutted the evidence regarding the cause and timing of Diamond’s death and thus exonerated Hammond. Moreover, post-conviction counsel believed in the merits of Hammond’s claims – he stated for the record: “I would . . . indicate to the Court that I believe that the claims presented in [Hammond’s] petitions state a substantial showing of deprivation[s] of constitutional rights. Every claim -- and I believe there’s 37 claims standing on their own -- would make a substantial showing.” (R. 186)

By preparing an amended petition and making these assertions in court, counsel had to ensure the claims in Hammond’s petition were adequately presented. Ill. S.Ct. R. 651(c). *See People v. Addison*, 2023 IL 127119, ¶ 24 (“We cannot hold that postconviction counsel provided reasonable assistance where she identified several claims that she believed were worth pursuing but did not make the necessary amendments to put the claims in their proper form.”); *People v. Urzua*, 2023 IL 127789, ¶¶ 59 (“By . . . adopting the *pro se* petition, retained counsel was required by Rule 651(c) to make amendments to the *pro se* petition that were necessary for an adequate presentation of petitioner’s . . . claim.”). But counsel failed that duty here.

Specifically, the amended petition filed by counsel merely contained what the circuit

court aptly described as a “laundry list” of 37 of Hammond’s own *pro se* claims. (C. 789-96) It contained no legal or factual argument, no legal or record citations, no supporting evidence, and no explanation for the absence of that evidence. (C. 790-95) In the State’s motion to dismiss, it pointed out specifically how Hammond’s claims had been inadequately presented, noting *inter alia* that “[t]here is nothing attached to any of the petitions” to support claims regarding witnesses who should have been called at trial. (C. 807) It also argued, with supporting case law, that the mere “list of counsel’s failures, unsupported by argument or authority,” was inappropriate and could not be considered by the court, and that the petitions did not include allegations of prejudice as required for claims of ineffective assistance of counsel. (C. 808-10) *See People v. Sanchez*, 169 Ill. 2d 472, 499-500 (1996) (defendant “waived” consideration of his constitutional claims by merely listing them, without any argument or citation); *People v. Dixon*, 2018 IL App (3d) 150630, ¶¶ 5-8, 16-24 (post-conviction counsel provided unreasonable assistance by filing an amended petition that merely listed claims in outline form, without alleging the legal elements of those claims).

Yet, even though the State gave post-conviction counsel a road map with specific directions on how to adequately present Hammond’s claims, counsel *still* chose not to properly amend the petition or to file a reply to the State’s motion to dismiss. (R. 4-5) He continued to assert in a conclusory manner that “the claims presented in the petitions state a substantial showing of deprivation of constitutional rights.” (R. 186) Then, unsurprisingly, the circuit court granted the State’s motion to dismiss. (R. 186-87)

The failure of counsel to adequately present Hammond’s claims violated Illinois Supreme Court Rule 651(c). *See People v. Turner*, 187 Ill. 2d 406, 414 (1990). In fact, the appellate court did not disagree that post-conviction counsel failed to adequately present Hammond’s claims. But it still found counsel’s representation reasonable. Specifically, following one side

of a split that has divided the appellate court, the court disregarded counsel's failure to adequately present Hammond's claims on its face and instead relied upon off-record speculation to presume counsel must have made a "good faith" effort to support Hammond's claims and was unable to do so. *People v. Hammond*, 2025 IL App (1st) 230583-U, ¶¶ 97, 100. It also ruled incorrectly that Hammond's own *pro se* petitions established prejudice. *Id.* ¶ 110.

The appellate court's presumption fails for multiple reasons. (1) It ignores that the Post-Conviction Hearing Act ("the Act") specifically requires either that supporting evidence be attached or that an explanation be given for why that evidence is not attached, and thus it presumes compliance with Rule 651(c), even when that presumption is affirmatively rebutted by counsel's failure to adequately present the defendant's claims as required by the Act; (2) it fails to consider that post-conviction attorneys are not permitted to stand on claims they know to be frivolous; (3) it allows a presumption of Rule 651(c) compliance, even when attorneys did not attempt to obtain supporting evidence; (4) it overlooks that Rule 651(c) is violated by the fact that counsel did not adequately present a defendant's claims, even if counsel tried to do so, in the same way the Rule is violated when a good-faith reason prevented counsel from being able to consult with the defendant or to review the trial records; and (5) it overextends this Court's 30-year-old decision in *People v. Johnson*, 154 Ill. 2d 227, 240 (1993).

Likewise, the appellate court's reasoning regarding *Strickland* prejudice was simply factually incorrect. While Hammond had tried to allege prejudice in his *pro se* petitions, he did not do so for every claim and otherwise mostly simply asserted that he was prejudiced in conclusory fashion. Thus, Hammond did not receive reasonable assistance of counsel at the second stage of proceedings. This Court should remand for new second-stage proceedings.

Applicable Law

The Post-Conviction Hearing Act provides a three-step process to adjudicate a defendant's

constitutional challenges to the proceedings leading to his conviction or sentence. 725 ILCS 5/122-1 *et seq.* If a post-conviction petition advances to the second stage, counsel is appointed and must provide reasonable representation. *People v. Turner*, 187 Ill. 2d 406, 410-11 (1999); 725 ILCS 5/122-4 (2023); Ill. S.Ct. 651(c) (2023). Specifically, post-conviction counsel must comply with three requirements contained in Illinois Supreme Court Rule 651(c). *People v. Perkins*, 229 Ill. 2d 34, 44 (2007). They must: (1) consult with the petitioner to ascertain their constitutional claims; (2) examine the record of the proceedings; and (3) make any amendments necessary for an adequate presentation of the petitioner’s contentions. Ill. S.Ct. R. 651(c). If counsel fails to fulfill any one of these requirements, “remand is required *** regardless of whether the claims raised in the petition had merit.” *Addison*, 2023 IL 127119, ¶¶ 27, 33, 37; *People v. Suarez*, 224 Ill. 2d 37, 47 (2007).

Whether post-conviction counsel provided reasonable assistance under Rule 651(c) is reviewed *de novo*. *Addison*, 2023 IL 127119, ¶ 17. Here, post-conviction counsel filed a Rule 651(c) certificate attesting to his compliance with the three requirements. (C. 800) But such a certificate only creates a presumption of compliance that can be rebutted by the record. *Perkins*, 229 Ill. 2d at 52. And that presumption is rebutted in this case. Specifically, as explained in Part A, *supra*, counsel’s failure to attach evidence to Hammond’s petition to support his claims, or to explain the absence of that evidence, violated Rule 651(c). As explained in Part B, so too did counsel’s failure to allege *Strickland* prejudice. Thus, new second-stage proceedings are required.

A. Post-conviction counsel failed to adequately present Hammond’s claims by not attaching supporting evidence or explaining its absence, and the appellate court’s presumption that counsel still complied with Rule 651(c) must fail.

First, post-conviction counsel violated Rule 651(c) by failing to attach required evidence to support Hammond’s claims or to otherwise explain the absence of this evidence. Both

statutorily and judicially, affidavits or other supporting evidence are required for a petition to advance to an evidentiary hearing. 725 ILCS 5/122-2; *Johnson*, 154 Ill. 2d at 240. Specifically, a petition must contain “affidavits, records, or other evidence supporting its allegations or shall state why the same are not attached.” 725 ILCS 5/122-2. “[T]he absence of affidavits, records or other evidence in support of the post-conviction petition renders the petition insufficient to require an evidentiary hearing.” *Johnson*, 154 Ill. 2d at 240 (collecting cases). If supporting evidence may not be obtained, the petition must include detailed reasons why the evidence is not attached. 725 ILCS 5/122-2. Such an explanation is crucial, as lack of support is fatal to a claim’s progression to an evidentiary hearing. *People v. Waldrop*, 353 Ill. App. 3d 244, 249-50 (2d Dist. 2004).

Given this requirement, it is well-established that a post-conviction attorney violates Rule 651(c) when he also fails to “attach any affidavits to support the claims in the post-conviction petition or offer any explanation for their absence.” *Turner*, 187 Ill. 2d at 414. *See also People v. Jones*, 2016 IL App (3d) 140094, ¶¶ 28, 31 (where defendant alleged trial court erroneously allowed State to redact his statement, post-conviction counsel violated Rule 651(c) by failing “to attach an affidavit from defendant regarding the substance of those statements or, preferably, attach the entire videotaped statement”); *People v. Thompson*, 2016 IL App (3d) 150644, ¶ 24 (post-conviction counsel violated Rule 651(c) by failing to attach records to support defendant’s claim that he was unfit at trial to waive his right to counsel); *Waldrop*, 353 Ill. App. 3d at 250 (where *pro se* petitioner alleged trial counsel was ineffective for failing to contact eyewitness and attached a police report confirming that witness’s statement, post-conviction counsel violated Rule 651(c) by failing to attach affidavit explaining significance of witness’s testimony or to explain why further supporting documentation was absent).

1. Numerous claims were presented without supporting evidence or an explanation on why that evidence was not attached.

As noted in the introduction, post-conviction counsel filed an amended petition and argued in open court that Hammond made a substantial showing of numerous constitutional violations. (C. 789-800; SUP R. 756, 759) Thus, as also explained, counsel had the duty to ensure Hammond's claims were adequately presented. *See Addison*, 2023 IL 127119, ¶ 24; *Urzua*, 2023 IL 127789, ¶¶ 59. However, as the State indicated in its motion to dismiss (C. 807), counsel instead inadequately presented Hammond's claims by failing to provide evidence to corroborate several claims raised by Hammond regarding witnesses who should have been investigated by trial counsel and/or called at trial, or alternatively explaining the absence of that evidence. Specifically, counsel's amended petition contained the following 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. (C. 791)

Trial counsel was ineffective for failure [*sic*] 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. (C. 793)

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. (C. 794)

The failure of a trial attorney to investigate sources of evidence that might benefit the client and to use that evidence at trial to develop a sound trial strategy may be ineffective. *People v. Makiel*, 358 Ill. App. 3d 102, 108 (1st Dist. 2005). Yet in post-conviction proceedings, such claims must be supported by an affidavit from the proposed witness. *People v. Enis*, 194 Ill. 2d 361, 380 (2000). Moreover and more specifically, at the second stage, post-conviction counsel cannot simply make conclusory allegations, but must actually make a substantial showing of a constitutional violation that, if true, would warrant relief. *See People v. Domagala*, 2013

IL 113688, ¶¶ 35-36 (the question at the second stage of post-conviction proceedings is whether the allegations “show” a constitutional violation) (internal quotations omitted); *People v. Patterson*, 2013 IL App (2d) 120359, ¶ 19 (“Vague assertions that amount to nothing more than conclusions are insufficient”). Here, Hammond did not attach any evidence to support these claims in his *pro se* petitions; neither did counsel’s amended petition attach anything to support these claims or explain the absence of that evidence. Counsel’s inadequate presentation of Hammond’s claims violated Rule 651(c). *See Turner*, 187 Ill. 2d at 414 (post-conviction attorneys must examine the record of the proceedings at trial).

For example, relevant to the first claim advanced by post-conviction counsel – what counsel termed the failure to call “a” defense expert regarding the cause and timing of Diamond’s death (C. 791) – Hammond had alleged *pro se* that the defense should have used “their” expert on those issues. (C. 540, 632) Relevant to that claim, the record shows the defense tendered discovery before trial on “their own” defense expert, *i.e.*, a witness named Kim L. Reilly, who trial counsel purported to be an expert in anthropology and osteology and who was expected to testify that “the lines on Diamond Shaw’s skull are normal suture lines found on all infant skulls.” (C. 191) If true, such testimony would have contradicted the State’s evidence regarding the cause of Diamond’s death at trial. The State’s own expert, Dr. Nancy Jones, testified to her own belief that Diamond suffered diastal fractures, explaining that typical suture lines present on all infants’ skulls had separated as Diamond’s own brain swelled from multiple brain injuries, eventually becoming so swollen that the portion controlling her body’s vital organs became compressed and shut down. (SUP R. 1501-03, 1508-13 V2) Yet the defense ultimately did not call Reilly at trial, stating before trial that Reilly would not be needed because counsel had believed—apparently erroneously—that Dr. Jones would testify similarly to Reilly. (SUP R. 1139-40)

Thus, to make a substantial showing of Hammond's claim that trial counsel was ineffective in failing to call an expert on the cause of Diamond's death, post-conviction counsel needed to show how Reilly planned to testify through an affidavit or through other supporting evidence, and how that testimony would have conflicted with the evidence presented at trial. Relevant supporting evidence could include, for example, notes from trial counsel regarding his conversations with Reilly, written reports prepared by Reilly, or an affidavit from Reilly. Yet post-conviction counsel did nothing. In fact, he did not even inform the circuit court that there *was* a specific expert who appeared prepared before trial to provide testimony that differed from that offered by Dr. Jones. Nor did counsel explain why no evidence was attached to support this claim. *See People v. Kluppelberg*, 327 Ill. App. 3d 939 (1st Dist. 2002) (post-conviction counsel violated Rule 651(c) by merely noting at hearing on State's motion to dismiss that a transcript in record indirectly supported defendant's claim, when a police report in the record would have directly supported defendant's claim, which trial court dismissed for lack of supporting evidence). This omission violated Rule 651(c). *See Turner*, 187 Ill. 2d at 414.

Similarly, the second claim advanced by post-conviction counsel—that trial counsel should have investigated Dr. Kim, who conducted Diamond's autopsy—also merely stated in inadequate and conclusory fashion that Dr. Kim “could have” challenged the State's evidence on the timing of the injuries causing Diamond's death and also weighed in on the cause of her death. (C. 793) This claim also had a basis in the record that needed to be fleshed out and supported by post-conviction counsel. At trial, evidence was presented that Diamond was officially pronounced dead at 9:21 a.m. on September 20, 1995, though she could have died earlier; meanwhile, Hammond provided evidence at trial—partially corroborated by a relative—that he did not get home that morning until 3:00 a.m. (SUP R. 1426-27, 1450-56, 1472-73, 1743-44, 1800-25 V2) Yet no more specific evidence was presented at trial as to when Diamond actually

died or as to the window of time in which her fatal injuries occurred. Dr. Kim did not testify at trial, and the substitute medical examiner called in his stead, Dr. Jones, testified that while Dr. Kim had indicated in his autopsy report that rigor mortis was present on Diamond's body, his report did not explain whether the rigor mortis was mild, moderate, or marked. (SUP R. 1514-15 V2) Thus, when Dr. Jones testified based on her review of that report, she could only estimate the injuries occurred between one and 12 hours before Diamond's death, or that if "really press[ed]," that they occurred less than six hours before death. (SUP R. 1523-24 V2)

Thus, if Dr. Kim could have narrowed the timing of Diamond's fatal injuries, it could have supported Hammond's testimony that he was not present when those injuries occurred. So too may Dr. Kim have had a differing opinion on the cause of Diamond's death, the second reason why post-conviction counsel advanced that trial counsel should have properly investigated Dr. Kim. (C. 793) In his *pro se* petition, Hammond asserted that Dr. Kim found dehydration and malnutrition contributed to Diamond's death (C. 641-45), a claim partially corroborated by Dr. Jones at trial, who nevertheless disagreed with those conclusions herself. (SUP R. 1510-11) But, again, nothing in the amended petition yet corroborates that Dr. Kim could shed helpful light on the timing or cause of Diamond's death. (C. 807) Dr. Kim's autopsy report was not attached to the petition or otherwise included in the record; post-conviction counsel did not support the claim through an affidavit from Dr. Kim or through any notes about the autopsy report from trial counsel's file; and post-conviction counsel also made no attempt to explain why this evidence was not attached. The trial court was again led to believe there must be no evidence to support this claim; and counsel's failure to adequately present this claim also violated Rule 651(c). *See Turner*, 187 Ill. 2d at 414.

Counsel similarly left unsupported Hammond's claim regarding the letters from his co-defendant and a police report authored by Chief Crull. (C. 794) In contrast to counsel's

own vague claim in that regard, which merely alleged counsel should have filed a motion before trial to admit this evidence, Hammond had at least tried in his own *pro se* petitions to explain why that evidence was important. He noted that: (1) the letters from Tate would have shown that he “did not do that [*sic*] to [Diamond], putting in question did someone else commit acts and offense charged and that Miss Tate was somehow protecting someone else,” and that Diamond fell a lot, which could have caused her traumatic head injuries. (C. 653-54); and (2) Crull’s police report indicated that Tate had told him that Diamond had been tied to her seat since midnight, which helped show the handwritten statement attributed to Hammond was incorrect. (C. 653-54)

But, again, Hammond did not attach Tate’s letters or Chief Crull’s report to his petitions, making it incumbent upon counsel to obtain that evidence or to explain its absence when raising those claims in an amended petition. *See People v. Spivey*, 2017 IL App (2d) 140941, ¶¶ 10-16 (defendant’s own affidavit explaining how witness would have testified was insufficient; at the second stage, a claim that counsel failed to call a witness “must be supported by an affidavit from the proposed witness”). To be clear, one letter from Tate to Hammond *otherwise* appears in the record, as it was submitted in mitigation at Hammond’s re-sentencing hearing. (C. 478-83) Yet Hammond did not reference that letter in his petition, and it is unclear if Hammond was intending to reference this single letter as among the “several letters” he believed should have been admitted by counsel at trial. (C. 653) Thus, again, both this claim and the claim regarding Chief Crull’s police report also needed additional evidentiary support, which counsel failed to obtain and provide. *See Turner*, 187 Ill. 2d at 414.

Finally, though not among the traditional types of post-conviction claims that require supporting evidence, post-conviction counsel also presented claims regarding a biased juror, which also required additional documentation based on the unique facts of this case. Specifically,

counsel alleged that:

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 the juror worked. (C. 793)

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*. (C. 794)

The failure of trial counsel to exclude jurors who show an inability to be impartial may amount to ineffective assistance of counsel. *People v. Metcalfe*, 202 Ill. 2d 544, 561-62 (2002). Yet counsel did not adequately present such a claim in this case, as he gave no explanation as to who this woman juror was, how she knew the State witness, what—if any—action trial counsel took against this woman, or why this prejudiced Hammond. And while claims in a post-conviction petition may be supported by the record when applicable (*see* 725 ILCS 5/122-2), the record here was insufficient to adequately support Hammond’s claim.

On the one hand, the record confirms there was indeed a woman who served on Hammond’s jury—Heidi Lieak—who knew a State witness, Investigator Richard Barber. During jury selection, Lieak stated that she knew Barber through her employment in hospital security, a job in which she hired off-duty Burnham police officers. (SUP R. 1364-65 V2) Moreover and notably, Lieak also revealed a second potential bias. Specifically, when the court asked Lieak if there was anything about the case itself that would keep her from being fair, she answered, “I have seen abused children come through the emergency room,” though she subsequently indicated when pressed by the court that nothing would keep her from being fair. (SUP R. 1368 V2) Thus, the record provides a basis to support Hammond’s claim that a juror in his case revealed potential biases to the court.

But beyond that, the record does not reveal what—if anything—counsel did about Lieak during the jury selection conference, such as calling her back for more questioning or seeking

to remove her. Instead, the discussions where the parties raised challenges to the jurors occurred off record, with the transcripts only reflecting the phrase “(Short pause)” as the discussions proceeded. (SUP R. 1376 V2) There is also no indication in the record of the defense team’s thoughts about Lieak, whether they used all their peremptory challenges in this case, or whether they raised any for-cause challenge to Lieak. Thus, to adequately present this claim, counsel needed to attach additional evidence, such as trial counsel’s notes, an affidavit from counsel and/or the prosecutors regarding their recollections of jury selection, or even an affidavit from Hammond regarding his own memory of what occurred. If counsel could not obtain any of that evidence, to meet the pleading requirements of section 122-2, he needed to explain why that evidence was not attached. But counsel did not do so.

Moreover, without any supporting evidence, the State and post-conviction court simply *assumed* trial counsel took no action against Lieak, and thus dismissed this claim on grounds of presumed trial strategy. (C. 810; R. 185, 187) In fact, it is possible that counsel did advocate for Lieak’s removal through a for-cause challenge, thus calling into question any strategy in not using any available peremptory challenge to remove her. The record could also show the court denied a for-cause challenge on unreasonable grounds. Thus, by leaving these claims unsupported, counsel allowed this claim to be rejected by the court for speculative reasons that may not have been accurate. Counsel’s failure to adequately plead this claim also violated Rule 651(c). *See Turner*, 187 Ill. 2d at 414.

In short, post-conviction counsel inadequately presented multiple claims in Hammond’s petition by failing to attach evidentiary support or to explain its absence.

2. The appellate court erroneously found post-conviction counsel’s performance reasonable by presuming counsel made a good-faith effort to obtain supporting evidence but was unable to do so.

When addressing this issue below, the appellate court did not disagree that counsel

left numerous claims unsupported. Thus, it could not dispute that counsel failed to adequately present those claims. Some appellate courts would have remanded Hammond’s petition for that reason. As will be explained throughout this section, those courts have ordered a remand when post-conviction counsel presented claims without required supporting evidence and when there was no evidence in the record that post-conviction counsel tried to obtain that evidence. *See People v. Wise*, 2024 IL App (2d) 191139, ¶¶ 19-22; *People v. Carson*, 2024 IL App (1st) 221644, ¶¶ 20-25; *People v. Jackson*, 2021 IL App (1st) 190263, ¶¶ 24-26; and *People v. Thompson*, 2016 IL App (3d) 150644, ¶ 25.

But the appellate court here took a different path to find post-conviction counsel’s assistance reasonable, notwithstanding the inadequate manner in which he presented Hammond’s claims. *Hammond*, 2025 IL App (1st) 230583-U, ¶¶ 97, 100. Specifically, the court cited *People v. Wallace*, 2016 IL App (1st) 142758, to state in varying forms that “[a] 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.” *Hammond*, 2025 IL App (1st) 230583-U, ¶¶ 97, 100. *Accord People v. Lewis*, 2022 IL App (1st) 192476-U, ¶ 20. This Court should reject such a presumption.

- a. **A Rule 651(c) certificate is rebutted when counsel fails to attach required supporting evidence or to explain why that evidence is not attached, a specific legislative mandate of section 5/122-2, and the appellate court’s presumption allows an end-run around this rule.**

First, in presuming that counsel made a good-faith effort to support the petition, the appellate court failed to consider that the filing of a Rule 651(c) certificate only creates a presumption of compliance that may be rebutted by the record, and is actually rebutted by the record when counsel does not adequately present the defendant’s constitutional claims. *Addison*, 2023 IL 127119, ¶ 21; *People v. Custer*, 2019 IL 123339, ¶ 32. Here, the appellate

court relied incorrectly upon a presumption of compliance with Rule 651(c) as the beginning *and the end* of its analysis. It did not consider that Rule 651(c) was violated even if counsel did try, but failed, to find evidence to support Hammond's claims, since counsel did not then explain why the required supporting evidence was attached as required.

In that regard, this Court has already held that the actual manner in which the defendant's claims are pled will trump counsel's mere assertion that they complied with Rule 651(c). For example, in *Addison*, 2023 IL 127119, ¶ 8, post-conviction counsel filed a Rule 651(c) certificate attesting to her compliance with the Rule. She also advanced five of the defendant's *pro se* claims in an amended petition. *Id.* ¶ 24. However, each claim could have been raised on direct appeal, and counsel did not include any allegation that direct appeal counsel was ineffective. *Id.* Notwithstanding counsel's Rule 651(c) certificate, this Court emphasized, "We cannot hold that postconviction counsel provided reasonable assistance where she identified several claims that she believed were worth pursuing but did not make the necessary amendments to put the claims in their proper form." *Id.*

Similarly, in *Urzua*, 2023 IL 127789, ¶¶ 13-17, the initial counsel appointed to the defendant's *pro se* petition withdrew from the case on the ground that the petitioner's claims were frivolous, and the defendant retained a private attorney to represent him. Retained counsel filed a Rule 651(c) certificate and informed the court that he would be adopting the *pro se* petition. *Id.* ¶ 59. Yet counsel failed to replace an unnotarized statement supporting the *pro se* petition with a notarized affidavit. *Id.* ¶ 60. This Court explained that counsel's Rule 651(c) certificate would have stood un rebutted if counsel had withdrawn from the case and not adopted the petition. *Id.* ¶ 64. But by adopting the petition, counsel took on the duty of making sure its claims were properly presented. *Id.* His failure to do so violated Rule 651(c). *Id.*

Here, post-conviction counsel failed Hammond just like the attorneys in *Addison* and

Urzua. As explained in Part A(1), *supra*, counsel’s statement in his Rule 651(c) certificate that he adequately presented Hammond’s claims was affirmatively rebutted by his failure to attach evidence to support those claims or to explain the absence of that evidence. *See Turner*, 187 Ill. 2d at 414. In fact, the failure to either present that corroborating evidence or to specifically plead why the evidence was not attached was a violation of a duty specifically imposed on post-conviction petitioners by the legislature. 725 ILCS 5/122-2 (“The petition shall have attached thereto affidavits, records, or other evidence supporting its allegations or shall state why the same are not attached.”). Allowing a *presumption* that counsel was unable to locate evidence to support the petition directly undermines the legislative mandate that a post-conviction petition must *specifically explain* why required supporting evidence is not attached. *Id.*

This Court has also explained that while the mandate to attach supporting evidence is itself an *evidentiary* requirement, the duty to provide an explanation when such evidence cannot be attached is a “*pleading* requirement[]” from which petitioners may not be excused. *People v. Collins*, 202 Ill. 2d 59, 68 (2002) (emphasis in original). To that end, this Court has long held that the failure to make routine pleading amendments violates Rule 651(c), such as failing to plead ineffective assistance of appellate counsel to overcome forfeiture, or failing to plead a lack of culpable negligence to overcome the late filing of a petition. *See Addison*, 2023 IL 127119, ¶ 23; *Turner*, 187 Ill. 2d at 413-14; *Perkins*, 229 Ill. 2d at 44. Accordingly, the presumption afforded to counsel in this case – that he *must* have made a good-faith effort to get supporting evidence, but could not do so – is untenable. If counsel encountered a roadblock in obtaining that evidence, section 122-2 *required* him to plead that roadblock to the court. *See also People v. Szabo*, 144 Ill. 2d 525, 532 (1991) (“Rule 651(c), therefore, requires that the record on appeal *disclose* that appointed counsel took the necessary steps to secure adequate representation of petitioner’s claims.”) (emphasis added). The failure to explain why no evidence

was yet attached was “fatal” to Hammond’s petition. *See People v. Delton*, 227 Ill. 2d 247, 254-55 (2008) (failure to explain why supporting evidence is not attached is “fatal” to claims and justifies dismissal in and of itself).

Here, the appellate court has removed the rebuttable nature of a presumption of compliance with Rule 651(c) in a manner that renders counsel’s duty to adequately present the defendant’s claims to be meaningless. While a rebuttable presumption of compliance attached when post-conviction counsel filed a Rule 651(c) certificate, Hammond rebutted that presumption by showing that his claims were inadequately presented. But the appellate court then undid that rebuttal, in a circular manner, by *again* relying on the presumption that attached when counsel filed the Rule 651(c) certificate, even though it had already been rebutted. It created its own, new presumption that counsel must have tried to comply with Rule 651(c), and held that trying is enough. As will be explained in subpart (d), *infra*, this Court’s Rule 651(c) compliance has never been guided by whether counsel *tried* to comply with Rule 651(c), but instead falls on whether counsel *did* comply with Rule 651(c). The court’s analysis here thus should have ended when it could not dispute that post-conviction counsel inadequately presented Hammond’s claims. That finding rebutted counsel’s statement in the Rule 651(c) certificate that he made the amendments necessary to adequately present Hammond’s claims, and it required a remand for new second-stage proceedings. *See Addison*, 2023 IL 127119, ¶ 24.

b. The appellate court’s presumption improperly allows post-conviction counsel to advance claims that they know to be frivolous, in violation of their ethical duties to the court.

The appellate court’s presumption should also be rejected because it improperly presupposes that post-conviction attorneys who have *not* simply made a pleading error under section 5/122-2 are unethically presenting claims they know to be frivolous to the court.

As just established, any post-conviction attorney who fails in a good-faith attempt to

obtain evidence to support a defendant's claims, but still believes those claims have merit and could potentially be supported at the third stage, is obligated under section 5/122-2 to explain why required supporting evidence was not yet attached. Short of that situation, there are only two other possibilities when a post-conviction attorney does not attach required supporting evidence to a post-conviction claim they advance in court. Either: (1) the attorney did not actually look for evidence to support the defendant's claims; or (2) their investigation showed the claim could not ever be supported and thus did not have merit, but the attorney advanced the claim anyway.

Here, the appellate court's presumption precluded any possibility that counsel did not undertake the required investigation. *Hammond*, 2025 IL App (1st) 230583-U, ¶¶ 97, 100. And applying the presumption regarding the second possibility demonstrates its flaws. Since post-conviction counsel did not explain why supporting evidence was not yet attached, if counsel's omission was not the result of counsel's failure to adequately plead Hammond's claims under section 5/122-2, the only other explanation is that counsel's investigation had shown Hammond's claims could not be supported and were frivolous. This presumption must fail, as post-conviction attorneys are ethically prohibited from knowingly advancing frivolous claims in court.

In *People v. Greer*, 212 Ill. 2d 192, 205 (2004), this Court held in unequivocal terms: "An attorney . . . who determines that defendant's claims are meritless cannot in good faith file an amended petition on behalf of defendant." Nor can they then even "stand mute" on the defendant's *pro se* petition at post-conviction proceedings. *Id.* at 206. Instead, they must withdraw. *Id.* at 209. *See also People v. Huff*, 2024 IL 128492, ¶ 28 (" . . . counsel has an ethical duty to not needlessly consum[e] the time and energies of the court and the State by advancing frivolous arguments") (internal quotations omitted). The only exception to this rule is when counsel does not *know* the claims are frivolous. *Huff*, 2024 IL 128492. ¶ 34. *See also People*

v. Dixon, 2018 IL App (3d) 150630, ¶ 22 (“Here, postconviction counsel chose to file an amended petition, so we assume that counsel found that the allegations in the *pro se* petition were not frivolous. If counsel had found some of the claims in the petition to be frivolous, the appropriate procedure would have been to omit those claims from the petition.”).

Here, the appellate court failed to consider that if counsel had failed in a good-faith attempt to support Hammond’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 to the court. In contrast, post-conviction counsel took the position that Hammond’s claims had merit. (R. 186) Specifically, as explained in Part A(1), *supra*, the claims requiring supporting evidence included allegations that trial counsel should have called an expert regarding the cause and timing of Diamond’s death, should have investigated Dr. Kim, and should have admitted an exculpatory police report and letters from the co-defendant.

Looking at each claim in turn, if counsel could not find an expert who could rebut the State’s evidence on the cause and timing of Diamond’s death, and also learned Dr. Kim could not assist in that regard, then counsel would have known these claims were fanciful and frivolous, rather than based on fact. *See People v. Hodges*, 234 Ill. 2d 1, 16-17 (2009) (a claim is frivolous when it is factually fanciful). Likewise, if counsel had found the letters from co-defendant Tate and the police report referenced in Hammond’s petition, but determined they did not support Hammond’s claims, counsel would have also known those claims were frivolous. He could not advance either claim without violating his ethical duties. *Huff*, 2024 IL 128482, ¶ 28. Yet counsel *did* advance each one of these arguments and asserted to the trial court that they made a substantial showing of a constitutional violation. (R. 186) Thus, the presumption of a “good faith effort” simply does not work in this case.

The better reasoning is found in *Wise*, 2024 IL App (2d) 191139, one of the appellate

court decisions that refused to resort to the presumption utilized by the appellate court here and instead focused on the adequacy of the presentation of the defendant's claims on its face. In *Wise*, post-conviction counsel made similar documentary failures, including the pursuit of a claim that trial counsel should have presented an alibi, without including any offer of proof as to the substance of the defendant's alibi. *Id.* On appeal, the court began by recognizing that while counsel filed a Rule 651(c) certificate, that only created a “*rebuttable* presumption of reasonable assistance.” *Id.* ¶ 16 (emphasis added). Quoting *Urzua*, 2023 IL 127789, ¶ 69, it found that presumption “rebutted when counsel ‘failed to make amendments to the petition *** for an adequate presentation of [defendant’s] contentions.’” *Wise*, 2024 IL App (2d) 191139, ¶ 19. The *Wise* court recognized that by amending the *pro se* petition, counsel demonstrated that she believed the claim had merit, as counsel otherwise had an ethical obligation to remove any claims from the petition she knew to lack merit. *Id.* ¶ 20. Thus, counsel’s failure to support the defendant’s alibi claim, *inter alia*, required a remand for new second-stage proceedings. *Urzua*, 2024 IL App (2d) 191139, ¶¶ 21-22. *See also People v. Thompson*, 2016 IL App (3d) 150644, ¶ 25 (counsel violated Rule 651(c) where defendant’s claim depended on mental health records, post-conviction counsel did not attach those records, and there was also no evidence “in the record” that counsel reviewed those records).

The *Wise* court correctly applied this Court’s precedent, and its reasoning should be adopted by this Court. By contrast, the presumption utilized by the appellate court in this case either forgives post-conviction attorneys from complying with section 5/122-2 or allows them to stand on claims they know to be frivolous. That presumption should be rejected.

c. The presumption allows for a finding of Rule 651(c) compliance even when counsel did not comply with the Rule, and there is no mechanism to uncover non-compliance.

The presumption that attorneys who fail to attach supporting evidence must have tried

but failed to obtain that evidence also unreasonably allows for a finding of Rule 651(c) compliance even when counsel did not, in fact, attempt to look for evidence to support the defendant's claims. In fact, the presumption also removes any mechanism to uncover which attorneys actually did try to look for evidence and which did not. Yet case law is replete with instances where attorneys *unknowingly* failed to comply with Rule 651(c), simply because they were confused about the burden and evidence required at the second stage. Thus, compliance with section 5/122-2 is vital in its requirement for an explicit explanation on why supporting evidence is not yet attached. For example, if counsel could not yet get an affidavit from a vital witness because the witness refused to speak to counsel without a subpoena, counsel must explain that. Only with such an explanation can courts distinguish between attorneys who did not attach supporting evidence despite actual compliance with Rule 651(c) and those who simply did not investigate the defendant's claims or otherwise comply with the Rule.

The appellate court decision predating this Court's own opinion in *Urzua* supports this point. There, the second-stage attorney did not submit a notarized affidavit from a witness because he believed erroneously that an unnotarized affidavit was sufficient at that stage. *See People v. Urzua*, 2021 IL App (2d) 200231, ¶ 85, *affirmed in part, reversed in part by Urzua*, 2023 IL 127789. Similarly, in *People v. Kelly*, 2012 IL App (1st) 101521, ¶¶ 34, 40, post-conviction counsel did not attach evidence to support the petitioner's claim while revealing his own misunderstanding that the first-stage frivolousness standard still applied at the second stage. In *People v. Patterson*, 2022 IL App (3d) 200099-U, ¶¶ 7, 12, post-conviction counsel did not attach required affidavits because he believed affidavits were only necessary at the third stage.⁴ And in *People v. Waldrop*, 353 Ill. App. 3d 244, 249 (2d Dist. 2004), counsel did not attach necessary affidavits because he believed they were necessary only when the

⁴ Hammond cites this unpublished case under Illinois Supreme Court Rule 23(d) for illustrative purposes, not for any precedential value.

defendant argued trial counsel failed to present an alibi defense.

While the attorneys' mistakes in the above-listed cases were on the record, that will not always be the case. In fact, each of these mistakes could have remained outside the record and never been discovered. But relying on a presumption that attorneys who failed to attach required supporting tried to obtain that evidence results in a finding of 651(c) compliance, even when the attorney did not comply with the Rule. Even worse, the presumption creates a perverse incentive for post-conviction counsel to *hide* any non-compliance with the Rule. Specifically, as long as counsel does not do or say anything that reveals their failure to investigate, a court will now *presume* that counsel undertook a reasonable investigation. Moreover, the defendant cannot challenge his attorney's silence on appeal, as he is not permitted to add new evidence to the record. *See Simmons v. Union Elec. Co.*, 121 Ill. App. 3d 743, 758 (5th Dist. 1984) (defendants generally may not add new evidence to record on appeal).

This is an absurd result, and similar silence and presumptions are not permissible in other comparable settings. For example, in the appeal of the post-conviction petition presently before this Court, appellate counsel would not be entitled to any presumption that there was nothing more she could do adequately present Hammond's claims, if she merely filed a conclusory brief listing Hammond's claims with no factual or legal support. *See Ill. S.Ct. R. 341(h)* (2026) (argument shall contain contentions, reasons, and citations); *People v. Johnson*, 192 Ill. 2d 202, 206-07 (2000) (ordering case to be rebriefed by new attorney where appellate brief in post-conviction appeal did not consistently cite record or case law). If appellate post-conviction counsel were unable to properly support any arguments, counsel would have been obligated to withdraw, while also explaining in an accompanying motion why she did not believe she could properly raise any claim on Hammond's behalf. *See People v. Meeks*, 2016 IL App (2d) 140509, ¶¶ 8-10, *citing Anders v. California*, 386 U.S. 738, 744 (1967).

Likewise, trial-level post-conviction attorneys who move to withdraw must *also* explain their reasoning: “whether a petition advances to the second stage based on judicial inaction or because the trial court found potential merit to the claims, a properly filed motion to withdraw is one that sets forth why the claims lack merit.” *People v. Frey*, 2024 IL 128644, ¶ 27. Moreover, the court must deny the motion to withdraw where counsel “is either unable or unwilling to make that case with respect to each of the *pro se* claims contained in the petition.” *People v. Kuehner*, 2015 IL 117695, ¶ 22.

By contrast, the presumption of reasonable assistance afforded by the appellate court when trial-level post-conviction counsel *advances* unsupported claims perversely harms defendants whose claims may have potential merit. Since post-conviction attorneys are required to withdraw when they know claims are frivolous, their choice not to withdraw signals that they believe there is at least some chance for the defendant’s claims to find success. *See Huff*, 2024 IL 128492, ¶ 28. Certainly, an attorney should explain their efforts in attempting to construct a claim when they do not believe they can advance that claim in good faith, as the law already requires. *See Frey*, 2024 IL 128644, ¶ 27. But so too should an attorney who *does* advance a claim be required to explain why they cannot yet plead that claim adequately with supporting evidence at the second stage. As explained in Part A(1)(a), *supra*, this pleading requirement has already been codified by the legislature. *See* 725 ILCS 5/122-2.

Indeed, many appellate court decisions that have refused to indulge in the speculative presumption utilized by the appellate court in this case have grounded their decision on the recognition that counsel’s compliance with Rule 651(c) needs to be shown on the record. For example, in *People v. Jackson*, 2021 IL App (1st) 190263, ¶ 2, the defendant was convicted of a crime involving his possession of a gun. In a *pro se* post-conviction petition, he argued his trial counsel was ineffective in failing to show the jury that the clothing he wore on the

date of the offense was so baggy that the officer who arrested him could not have seen a bulge in his pocket, as the officer had testified. *Id.* ¶ 21. After the petition advanced to the second stage, post-conviction counsel filed a Rule 651(c) certificate in which she averred that she made amendments necessary to adequately present the defendant's contentions. *Id.* ¶ 22. However, the State argued the amended petition did not make a substantial showing of a constitutional violation because the defendant offered no corroborating evidence other than his own description. *Id.* ¶¶ 24-26.

On appeal, the defendant argued post-conviction counsel's failure to support his claim with evidence violated Rule 651(c). He pointed out, for example, that counsel should have amended the petition to show if his clothes were documented on a jail inventory sheet or in an arrest photo, and whether they were available to trial counsel. *Jackson*, 2021 IL App (1st) 190263, ¶ 44. Though the record was silent on whether counsel attempted to obtain that evidence, the appellate court refused to simply presume counsel did so. *Id.* It instead applied this Court's precedent in *Johnson*, 154 Ill. 2d at 247-48, that post-conviction counsel had an obligation to attempt to locate that evidence. *See Jackson*, 2021 IL App (1st) 190263, ¶ 44. Since the record did not show that occurred, the court remanded the cause to allow counsel to further amend and support the petition. *Id.* ¶¶ 45-46. It further ordered that counsel on remand should indicate on the record what attempts were made to document the petition. *Id.* ¶ 46. *See also People v. Carson*, 2024 IL App (1st) 221644, ¶¶ 20-25 (remanding for new second-stage proceedings where record did not show whether post-conviction counsel took appropriate action to find excuses for defendant's delay in not timely filing the post-conviction petition and ordering counsel on remand to state the attempts made in that regard).

These decisions ensure that post-conviction petitioners receive the reasonable assistance to which they are entitled. The presumption utilized by the appellate court in this case does

not. Again, it should be rejected.

- d. Rule 651(c) was violated when counsel did not adequately present a defendant's claims, even if counsel tried to do so, just like the Rule is violated when some good-faith reason prevented counsel from being able to consult with the defendant or to review the records from the defendant's trial.**

The fallacy of the appellate court's reasoning is also evident since it hinges its entire analysis on a presumption on what counsel *tried* to do, rather than on what counsel actually did. More specifically, in the face of a record that rebutted counsel's compliance with Rule 651(c), the appellate court found Rule 651(c) was satisfied simply because the court presumed counsel must have *tried* to find evidence necessary to support Hammond's claims. *Hammond*, 2025 IL App (1st) 230583-U, ¶¶ 97, 100. But as explained in the prior sections, even if counsel *did* properly investigate Hammond's claims, counsel still failed to adequately present them to the court, in violation of Rule 651(c). This Court's Rule 651(c) analysis has never been driven by what post-conviction counsel tried to do, but hinges simply on whether counsel complied with each step of the Rule. For example, had the record shown counsel could not consult with Hammond or could not read the relevant portions of the record, a remand would have been required, notwithstanding counsel's good-faith efforts. There should be no exception to the Rule when counsel does not adequately present the defendant's claims to the court.

More specifically, in *People v. Owens*, 139 Ill. 2d 351, 364-66 (1990), this Court held that when a post-conviction attorney cannot fulfill their duty of consultation due to the petitioner's lack of fitness, the post-conviction proceedings cannot simply proceed as usual. Either a "next friend" must be appointed, or the matter must be stayed until the defendant's fitness is restored and the required consultation can occur. *Id.*

The same is true when counsel makes a good-faith effort to read the transcripts relevant to the defendant's post-conviction claims, but is unable to do so. For example, in *People v.*

Willis, 2023 IL App (1st) 211404-U, ¶ 4⁵, the post-conviction attorney’s Rule 651(c) certificate indicated that he had reviewed some transcripts in the defendant’s case, but that “the actual transcript from the sentencing is not available - and may never be available. Call from Court Reporter’s Office indicates ‘notes’ are missing, and court reporter is unavailable. I have asked support staff to continue searching.” ¶ 4. Yet the missing transcript had been included in the appeal, and it was relevant to a sentencing claim raised by the defendant in the post-conviction petition. *Id.* ¶ 5. On appeal, the court recognized that the post-conviction attorney “made significant efforts on defendant’s behalf.” *Id.* ¶ 6. Yet it also could not ignore that post-conviction counsel did not read all of the relevant transcripts “because he was *unable* to do so.” *Id.* ¶ 5 (emphasis added). While the court “c[ould] not say whether appointed counsel could have obtained and read the missing transcript with greater effort,” what mattered was that “it remains true that the record does not show that counsel performed one of the three essential duties enumerated in Rule 651(c).” *Id.* ¶ 7. Thus, the court remanded for new second-stage proceedings in compliance with the Rule. *Id.* ¶ 9.

There is no reason to treat the amendment function of Rule 651(c) any differently. The reason a presumption of compliance exists through the filing of a Rule 651(c) certificate is because attorneys who submit those certificates “are officially representing to the court that the duties listed in the certificate have been fulfilled. . .” *People v. Morgan*, 2015 IL App (1st) 131938, ¶ 92, *citing Perkins*, 229 Ill. 2d at 50. To that end, an attorney’s assertion that they consulted with the petitioner and examined the record is something the attorney should generally know to be true or false. When an attorney officially reports that they consulted with the defendant and read the record, courts can presume the attorney would not knowingly lie to the court.

On the other hand, the proper presentation of a defendant’s constitutional claims may

⁵ The unpublished decision in *Willis* is cited for persuasive purposes.

actually be confirmed or rebutted by the actual manner in which the defendant's claims were presented by counsel. As an example and as explained in the prior subpart, *supra*, a post-conviction attorney could have made a good-faith effort to adequately present the defendant's claims, but still make a legal error in how they present the claims, based on a misunderstanding of the burden at second-stage proceedings or on a substantive misunderstanding of criminal law. Thus, despite their good-faith attempt to comply with Rule 651(c), they still failed to adequately present the defendant's claims. Thus, the proof of compliance lies in the petition itself. When the record affirmatively shows—as it does in this case—that the petitioner's claims were presented inadequately, that objective fact should trump the attorney's own attested *belief* that they complied with the Rule.

e. This Court's decision in *Johnson* does not provide support for the presumption.

Finally, some courts who have applied the good-faith effort presumption at issue here have cited the following language from *Johnson*, 154 Ill. 2d at 241: in an “ordinary case, 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.” *See, e.g., Wallace*, 2016 IL App (1st) 142758, ¶ 27. This reliance is misplaced given the decision in *Johnson* as a whole and in light of this Court's more recent precedent.

Initially, this Court held in *Johnson* that post-conviction attorneys violate Rule 651(c) when they do not attach evidence necessary to support the petitioner's claims or explain its absence. 154 Ill. 2d at 243-45. Specifically, this Court pronounced:

At a minimum, counsel had an obligation to attempt to obtain evidentiary support for claims raised in the post-conviction petition. *Id.* at 245.

But in *Johnson*, post-conviction counsel explicitly told the court he had not obtained

affidavits from the witnesses due to his own busy schedule. *Id.* Thus, crucially, this Court did not need to consider any presumption of a good-faith investigation; it found the record “clearly” demonstrated counsel’s non-compliance with Rule 651(c). *Id.* at 243. *Johnson*’s additional comments regarding how in an “ordinary case” a court “may” presume counsel made an effort to support the petitioner’s claims (*id.* at 241) were unnecessary to the decision and thus need not be considered binding precedent. *See Exelon Corp. v. Dept. of Revenue*, 234 Ill. 2d 266, 277 (2009), *quoting United States v. Crawley*, 837 F.2d 291, 292 (7th Cir. 1988) (dictum is ““a remark, an aside, concerning some rule of law or legal proposition that is not necessarily essential to the decision and lacks the authority of adjudication,”” and is generally not binding authority). Indeed, when this Court later addressed a similar issue regarding counsel’s failure to attach supporting evidence in *Turner*, 187 Ill. 2d 406 (1999), it did *not* presume from a silent record that counsel must have tried to find supporting evidence but was unable to do so. Instead, it focused on the objective fact that counsel did not shape the petitioner’s claims into their proper form, which violated Rule 651(c). *Id.* at 414-17.

But even if this language from *Johnson* were not *dicta*, this Court did not define the “ordinary case” where a presumption of compliance could arise. 154 Ill. 2d at 241. In light of this Court’s precedent in the 30 years since *Johnson* was decided, that “ordinary case” could not involve a case like this, where the post-conviction attorney advanced numerous claims without any of the required supporting evidence or an explanation for its absence. This Court could not have been more clear in *Addison* and *Urzua* that post-conviction attorneys *must* make any amendments necessary to adequately present the claims they advance in court. *Urzua*, 2023 IL 127789, ¶ 59; *Addison*, 2023 IL 127119, ¶ 26. *Johnson* was also decided in 1993, well before *Greer*, which was issued in 2004 and in which this Court first described counsel’s ethical duty not to present claims they know are frivolous. *See Greer*, 212 Ill. 2d 192.

This Court's more recent authority instead supports that an "ordinary case" where a court may presume post-conviction counsel tried to obtain affidavits, but was unable to do so, is one where the post-conviction attorney only advanced claims that did *not* require any supporting evidence and opted *not* to advance claims that did. If, for example, the post-conviction attorney: (1) filed a Rule 651(c) certificate stating they made the amendments necessary for an adequate presentation of the defendant's claims; and (2) removed claims from the original *pro se* petition that depended on outside evidence, it could be reasonable to presume counsel had tried but failed to obtain supporting evidence for the claims counsel chose not to present. *See Urzua*, 2023 IL 127789, ¶ 64 (counsel's Rule 651(c) certificate would have stood un rebutted if counsel had withdrawn from the case and not adopted the petition). By contrast in this case, counsel did advance claims that depended on supporting evidence.

For all these reasons, the presumption relied upon by the appellate court in this case should be rejected. Rather than relying on any sort of off-record speculation of compliance, the test for Rule 651(c) compliance *has* to be based on the record itself, just as this Court held in *Addison* and *Urzua*. Specifically, the question must be whether the attorney adequately presented the claims they chose to advance in court. If the answer to that question is no, the attorney did not comply with Rule 651(c), and the cause must be remanded for new second-stage proceedings. *See Urzua*, 2023 IL 127789, ¶ 64. Post-conviction counsel in this case did not adequately present the claims he chose to advance, so the cause should be remanded for new second-stage proceedings.

B. Post-conviction counsel also inadequately presented Hammond's claims by failing to allege prejudice for his claims of ineffective assistance of counsel.

As the State also argued in the circuit court (C. 808-10), post-conviction counsel here also inadequately presented Hammond's claims in that counsel failed to show or to even allege

prejudice under *Strickland v. Washington*, 466 U.S. 668 (1984), for Hammond's claims of ineffective assistance of counsel. Once again, counsel's entire amended petition merely listed the title of Hammond's claims - it contained no analysis whatsoever. (C. 789-96) He pled no legal or factual elements to Hammond's claims, including no allegation of prejudice. (C. 789-96) As this Court held in *Turner*, 187 Ill. 2d at 413, post-conviction counsel does not adequately present a defendant's claims of ineffective assistance of counsel if they fail to explain how the defendant was prejudiced by the alleged deficiencies, an "essential element[] of petitioner's legal claims." *See also People v. Jennings*, 345 Ill. App. 3d 265, 273-74 (4th Dist. 2003) (counsel violated Rule 651(c) by failing to amend defendant's *pro se* claim that plea counsel failed to file a post-plea motion to include an allegation of prejudice).

Addressing this issue below, the appellate court determined counsel did not need to allege prejudice because the court believed Hammond had sufficiently alleged prejudice in his own *pro se* petitions. *Hammond*, 2025 IL App (1st) 230583-U, ¶ 110. But Hammond's multiple *pro se* petitions actually did not include a proper prejudice analysis for many of his claims. In his original 2007 petition, Hammond claimed ineffective assistance of trial or appellate counsel by merely asserting in conclusory fashion that he was prejudiced, without explaining how (for example, that counsel was "so deficient and ineffective that it Prejudice Defendant") (C. 538-39)) or failed to allege prejudice at all (C. 540, 545, 546, 547, 548, 549) In his 2013 supplemental *pro se* petition, Hammond continued to often fail to allege prejudice, or again did so only in conclusory form. (C. 628-630, 631, 632, 646, 650) *See, e.g.*, (C. 646) (where Hammond alleged appellate counsel was ineffective for failing to challenge court's denial of motion to suppress statement, with no additional facts or argument). Indeed, the fact that neither Hammond nor post-conviction counsel had alleged prejudice was one of the primary reasons the circuit court dismissed the petition at the second stage. (R. 186) Thus, post-conviction

counsel also failed to adequately present Hammond’s claims by failing to allege *Strickland* prejudice. *See Turner*, 187 Ill. 2d at 413.

C. Conclusion

Melvin Hammond waited more than 10 years in remanded second-stage post-conviction proceedings for appointed counsel to assist him on a *pro se* petition that he filed in 2007, after the initial attorney appointed to his petition had withdrawn from his case without complying with Rule 651(c). *See People v. Hammond*, 2012 IL App (1st) 101096-U, ¶¶ 22-25; *People v. Lighthart*, 2023 IL 128398, ¶ 77 (expressing “strong disapproval” of the 10-year delay that had occurred in the second-stage proceedings). After a decade of waiting, post-conviction counsel ultimately made a “laundry list” of Hammond’s claims and did nothing to adequately present them to the court. *See Addison*, 2023 IL 127119, ¶ 42. For all the reasons cited above, counsel’s pleading demonstrates his failure to comply with Rule 651(c) and requires a remand. *See Suarez*, 224 Ill. 2d at 48. Thus, this Court should remand this cause for new second-stage proceedings.

CONCLUSION

For the foregoing reasons, Petitioner-Appellant Melvin Hammond respectfully requests that this Court reverse the second-stage dismissal of his post-conviction proceedings and remand for new second-stage proceedings.

Respectfully submitted,

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CERTIFICATE OF COMPLIANCE

I certify that this brief conforms to the requirements of Rules 341(a) and (b). The length of this brief, excluding the pages or words contained in the Rule 341(d) cover, the Rule 341(h)(1) table of contents and statement of points and authorities, the Rule 341(c) certificate of compliance, the certificate of service, and those matters to be appended to the brief under Rule 342, is 45 pages.

/s/ Caroline E. Bourland
CAROLINE E. BOURLAND
Assistant Appellate Defender

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2025 IL App (1st) 230583-U
No. 1-23-0583

FIRST DIVISION
June 16, 2025

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

IN THE
APPELLATE COURT OF ILLINOIS
FIRST JUDICIAL DISTRICT

THE PEOPLE OF THE STATE OF ILLINOIS,	)	Appeal from the Circuit Court
	)	of Cook County.
Plaintiff-Appellee,	)	
	)	
v.	)	No. 95 CR 28516
	)	
MELVIN HAMMOND,	)	The Honorable
	)	Geraldine D'Souza,
Defendant-Appellant	)	Judge Presiding.
	)	
	)	
	)	

JUSTICE PUCINSKI delivered the judgment of the court.
Presiding Justice Fitzgerald Smith and Justice Cobbs concurred in the judgment.

ORDER

¶ 1 Held: (1) Defendant failed to make a substantial showing that appellate counsel provided ineffective assistance of counsel. (2) Postconviction counsel provided reasonable assistance.

¶ 2 Defendant Melvin Hammond appeals the second-stage dismissal of his postconviction petition. On appeal, defendant first argues that he made a substantial showing that appellate counsel was ineffective for failing to argue trial counsel's ineffectiveness during closing arguments. Specifically, he contends that trial counsel was ineffective during closing argument

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by (1) discrediting defendant's trial testimony and (2) conceding his guilt under a theory of accountability. He further asserts that trial counsel was ineffective for failing to object to the State's closing arguments when the State (1) implied that the jurors' oaths required them to convict defendant, (2) appealed to the jurors' emotions, and (3) misstated the law of accountability.

¶ 3 Additionally, defendant argues that postconviction counsel provided unreasonable assistance by (1) failing to obtain supporting evidence, (2) failing to overcome procedural forfeiture, and (3) failing to allege prejudice. We affirm.

¶ 4 I. BACKGROUND

¶ 5 A grand jury indicted defendant on six counts of first degree murder (720 ILCS 5/9-1(a)(1)-(3) (West 1994)), one count of aggravated battery of a child (*id.* § 12-4.3(a)), three counts of aggravated battery (*id.* § 12-4(a)), and one count of endangering the life or health of a child (*id.* § 12-21.6), for the death of thirteen-month-old Diamond Shaw. The matter proceeded to a jury trial.

¶ 6 A. Pre-Trial Proceedings

¶ 7 Trial counsel filed a motion in limine to qualify Kim L. Reilly as a defense expert witness to rebut the anticipated testimony of Dr. Kim,¹ the medical examiner who conducted Diamond's autopsy and was expected to testify that Diamond had sustained a skull fracture. Reilly, a physical anthropologist, would testify that the lines on Diamond's skull were not a fracture, but normal suture lines commonly found on all infants' skulls. Prior to trial, trial counsel informed the court that the motion in limine was no longer relevant. Trial counsel explained that the State no longer intended to call Dr. Kim as a witness. Instead, the State planned to call the medical

¹ The record does not contain Dr. Kim's first name.

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examiner, Dr. Nancy Jones, as an expert. Dr. Jones stated that Dr. Kim was “partially mistaken” in concluding that Diamond had a skull fracture, noting that the lines identified were suture lines. The record does not reflect that the circuit court ever ruled on the defendant’s motion in limine to qualify Reilly and she was not called as a witness.

¶ 8 Trial counsel also requested an involuntary manslaughter instruction. He argued that defendant’s written statement provided enough evidence for the instruction and stated:

“Now, our position is that through the jury selection process as well as through the evidence we put on, both through cross-examining the State’s witness and our own, there is [a] theory of defense that will emerge. I think we would be hindered from pushing forth on that theory if we are not able to obtain a ruling from the Court, which would give us sort of a front line ruling that in fact our theory of the defense is one that we can actively put on.”

The circuit court ruled that it would issue an involuntary manslaughter instruction if the evidence developed as trial counsel anticipated.

¶ 9 B. Jury Selection and Opening Statement

¶ 10 During jury selection, Lieak—who ultimately served on the jury—informed the court that she worked as the manager of safety and security at a hospital. She regularly employed off-duty police officers from surrounding area police departments. She knew Officer Richard Barber. She affirmed that she would be able to judge his testimony in the same manner as any other witness. The circuit court asked, “Is there anything about this type of case that would prevent you from being fair and impartial?” Lieak responded, “I have seen abused children come through the emergency room.” The circuit court then asked whether that exposure would prevent her from being fair and impartial. She responded, “No.” The court then asked, “So even with your prior work experience, you still could be fair and impartial in this case?” She replied, “Yes, I could.”

¶ 11 In his opening statement, trial counsel argued:

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“The evidence in this case will show at most that Melvin Hammond did not prevent Michele Tate from injuring this child or that perhaps Melvin Hammond spanked this child at a time when she should not have been spanked. Under our law, that could be recklessness, and Judge Morrissey will instruct you on the law at the end of the case as he’s told you this afternoon.

Consider the instructions that you receive a way of putting the evidence that you will hear over the next couple of days into a box, and the boxes that we have in this case are first degree murder box, and involuntary manslaughter box which is reckless conduct and not guilty.”

¶ 12 C. Trial Evidence

¶ 13 1. *State’s Case*

¶ 14 Burnham Police Chief J.D. Crull testified that, at approximately 8:59 a.m. on September 20, 1995, he responded to a dispatch call regarding a baby who was not breathing at 14401 Bensley Avenue, Apartment 3, in Burnham, Illinois. Crull arrived at the apartment approximately one minute after receiving the dispatch call, where defendant and Tate informed him that Diamond was unresponsive. Crull proceeded to the bedroom, where he found Diamond unresponsive and performed infant CPR on her. Paramedics arrived and transported Diamond to St. Margaret’s Hospital in Lake County, Indiana. Crull then drove Tate to the hospital. During the drive, Tate stated that she had last seen Diamond with her eyes open at approximately 8:00 a.m. An hour later, Diamond was unresponsive, prompting Tate to call the police. Diamond was pronounced dead at the hospital.

¶ 15 Crull observed that Diamond had extensive bruising, with black and blue marks spanning from her waist to her knees and under her chest. She also had visible injuries on her face and legs. Additionally, Crull noticed that Diamond’s vagina was swollen and bloody. He directed Officer Richard Barber to bring the department’s photographic equipment to the hospital. Crull and Barber then met with the Lake County Coroner’s Office and photographed Diamond’s

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injuries. Barber requested that Tate and defendant come to the police station to discuss the cause of Diamond's death.

¶ 16 Dr. Prakash Rattan testified that on September 20, 1995, he examined and treated Diamond in the emergency room. Dr. Rattan performed CPR, intubated her, and administered epinephrine. Diamond was pronounced dead at approximately 9:21 a.m. Dr. Rattan testified that Diamond's injuries were consistent with being struck by a blunt instrument.

¶ 17 Dr. Nancy Jones testified that she was the medical examiner who reviewed the autopsy of Diamond, which had been conducted by Dr. Kim. The autopsy revealed multiple blunt force trauma injuries of varying ages and types, distributed across nearly the entire surface of Diamond's body. Notably, her head exhibited two recent bruises on the right side of her forehead, a laceration near her right ear, healing injuries to the right cheek and lower jaw, and additional bruising on the left side of her head, including the left temporal region and a large bruise near the left ear, as well as a laceration on the left ear. Injuries to her wrists were indicative of her having been restrained.

¶ 18 Diamond's internal examination showed no evidence of natural disease or congenital abnormalities. Bruising on her back corresponded with deep subcutaneous hemorrhaging. Her head sustained significant internal injuries, including seven distinct areas of subgaleal hemorrhage—bleeding beneath the scalp surface—consistent with blunt trauma applied to multiple areas of the head. Examination of her brain revealed an epidural hemorrhage in the occipital region, located at the back of the head, which is bleeding between the skull and the outer layer of the dura mater. The brain itself was extremely swollen, and its surface displayed contusions and bruising.

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¶ 19 Although Diamond's skull was largely intact, Dr. Jones identified a diastatic fracture. She explained that unlike adult skulls, children's skulls are not fully fused and contain sutures where bone growth occurs. As the brain swells and pressure increases inside the skull, these sutures may separate, resulting in diastatic fractures. In Diamond's case, accessory sutures at the base of her skull had separated due to swelling, producing additional diastatic fractures in that area. Dr. Jones opined that the injuries to Diamond's head were consistent with an adult repeatedly striking her with their hands. Over time, these injuries would cause the brain to swell, eventually leading to suture separation, compression of the brainstem, loss of respiratory and cardiac function, a coma-like state, and ultimately death. Dr. Jones concluded that Diamond's cause of death was multiple injuries resulting from blunt force trauma. Dr. Jones testified that, in layman's terms, Diamond had been beaten to death. Dr. Jones opined that the head injuries occurred between one and twelve hours before Diamond's death, but stated that, if required to be more specific, she would estimate they occurred within six hours prior to death.

¶ 20 On cross-examination, Dr. Jones acknowledged that she did not agree with all aspects of Dr. Kim's autopsy findings. Specifically, she disagreed with the conclusion that Diamond had sustained a skull fracture; in her view, the injury was a diastatic fracture.

¶ 21 Officer Richard Barber testified that on September 20, 1995, at approximately 9:20 a.m., he received a call from Crull. Following the call, he gathered camera equipment and waited to be picked up by Crull. Crull transported him to the hospital to take photographs of Diamond. He observed injuries to Diamond's body. Afterwards, he asked defendant and Tate to accompany him to the police station for questioning. Tate signed a consent form to allow the police to search her and defendant's apartment. He recovered a baby's car seat, an aqua wash cloth, a white sock with a red stain, a cardboard portion of a hanger, a black belt, two bed sheets, and three

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shoelaces, one or two of which had red stains. The parties stipulated that Diamond's blood was on the sock and belt, and a mixture of her blood and defendant's blood was on the shoestrings and car seat cover. Diamond's car seat was located in the living room on a mountain of clothes.

¶ 22 After he searched the apartment, Barber returned to the police station to question Tate and defendant. He read defendant his Miranda rights prior to questioning him. Defendant told Barber that approximately five months ago, he allowed Tate and Diamond to move in with him. Defendant was not the father of Diamond. He and Tate would occasionally discipline Diamond. Defendant would "whoop" or "spank" Diamond, and Tate would hit her with a belt. Defendant was six foot two inches and weighed one hundred seventy-five pounds. Defendant would tie Diamond's hands to the car seat where she slept.

¶ 23 After reviewing the autopsy and interviewing neighbors, Barber again requested Tate's consent to search the apartment, which she provided. He did not notice a playpen, crib, or any baby toys in the apartment.

¶ 24 Assistant State's Attorney John Coyne testified that he interviewed defendant on September 21, 1995. Prior to the interview, Coyne advised defendant of his Miranda rights. Coyne prepared a written statement, which defendant reviewed and signed. In the statement, defendant indicated that he had lived with Tate and Diamond since April 1995 and had assumed a parental role in Diamond's life. Defendant stated that he and Tate initially agreed that Tate would be the one to discipline Diamond by striking her on the legs, arms, and buttocks, which they considered a "good way to discipline" her. They subsequently agreed that both would "whup" Diamond.

¶ 25 Defendant initially told Coyne to include in the statement that, beginning in mid-May, he disciplined Diamond by "whupping" her approximately ten times per month. Defendant asked

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Coyne to reduce that estimate to eight times per month. Defendant stated he would discipline Diamond for crying, removing her diaper, and jumping off the bed. He explained that each time he disciplined her, he removed her diaper and struck her on the buttocks and legs for approximately three minutes. Defendant instructed Coyne to revise the statement to omit any reference to striking her legs.

¶ 26 Defendant further stated that beginning in July 1995, Tate began striking Diamond on the legs and buttocks with a belt, which caused multiple cuts. He estimated that Tate did this two to three times per week. Defendant acknowledged that Coyne showed him a photograph of Diamond that depicted cuts on her legs and buttocks. Defendant stated that he and Tate discussed using the belt on Diamond. When Tate said that her hands “did not work anymore,” defendant told her, “my hand works,” and continued using his hands to discipline Diamond while Tate used the belt. Defendant admitted that when he struck Diamond, he hit existing wounds, causing them to bleed. Defendant also acknowledged that Coyne showed him a photograph of injuries to Diamond’s vaginal area and admitted to striking her there.

¶ 27 Defendant stated that on September 20, 1995, he arrived home at approximately 1:30 a.m. and found Diamond in her car seat, where she typically slept. When Diamond began to cry, he assumed she was thirsty because her bottle was broken. Tate was in bed, but defendant was unable to sleep due to the baby’s crying. He told Diamond to “go to sleep” several times; she would calm down temporarily but then resume crying. Tate also told her to go to sleep. Defendant eventually got out of bed, removed Diamond’s diaper, and “whupped” her before placing her back in the car seat. He believed she may have hit her head on the back of the seat. He returned to bed, but Diamond continued to cry and mumble. At Tate’s suggestion, he placed the car seat with Diamond inside in the living room.

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¶ 28 Defendant again returned to bed but remained unable to sleep. Tate then stated she was going to “whup” the baby. They both went into the living room. Defendant removed Diamond from the car seat and placed her on the floor, where she “hit her head.” He then removed her diaper and struck her again. Afterward, he returned to bed and went to sleep. When he awoke at approximately 8:15 a.m., he noticed that something was wrong with the baby. Tate called 911.

¶ 29 Coyne also presented a photograph of injuries to Diamond’s hands, and defendant admitted that he had previously tied her hands while she was in her car seat to prevent her from scratching her face. Following Coyne’s testimony, the State rested.

¶ 30 *2. Defendant’s Case*

¶ 31 Latisha Murphy testified that she had a ten-year-old son with defendant. She admitted to having a prior felony for public benefits fraud. She had known defendant for sixteen years, beginning in elementary school. Their romantic relationship continued until approximately three years after high school. Defendant continued to visit weekly to see their son. Murphy testified that defendant had a reputation in the community for being a peaceful individual and a good caregiver.

¶ 32 Quaintance Motley testified that she had known defendant for approximately ten years. She described their relationship as that of boyfriend and girlfriend. She generally socialized with defendant four to five times per week. Motley testified that defendant had a reputation in the community for being a peaceful individual and a good caregiver.

¶ 33 Carolyn Hall testified that she was defendant’s aunt. She stated that defendant’s mother had suffered from cerebral palsy for approximately seven to eight years, and that defendant visited her home each night to care for her. Hall further testified that prior to moving in with

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defendant, Tate had lived with defendant's cousin. Hall stated that defendant had a reputation in the community for being a peaceful person and a good caretaker.

¶ 34 Isaac Bracey testified that he had been a friend of defendant's for approximately seven years. He and defendant worked together as mechanics. Bracey stated that defendant cared for his mother, who had cerebral palsy, every night. On September 19, 1995, defendant left work at approximately 5:00 or 6:00 p.m. to care for his mother. Bracey testified that defendant had a reputation in the community for being a peaceful person and a good caretaker. He acknowledged a prior felony conviction for which he successfully completed probation.

¶ 35 Mark Hall testified that he was defendant's brother. He stated that in 1995, their mother required special care due to frequent seizures. Defendant provided that care by feeding her and keeping her company. Hall testified that he called their mother's house between approximately 12:00 and 1:00 a.m., and defendant answered the phone. Hall further testified that defendant had a reputation in the community for being a peaceful person and a good caretaker.

¶ 36 Yolanda Redman testified that she lived with defendant for a period of time while she was attending high school. She testified that defendant had a reputation in the community for being a peaceful person and a good caretaker.

¶ 37 Defendant testified that in early June of 1995, Tate and Diamond began living with him. When she moved in, Tate brought only some clothes and a car seat. The arrangement was intended to be temporary. Defendant and Tate discussed the arrangement beforehand and agreed that Diamond would remain Tate's responsibility, as defendant would be away working most of the day. He already had significant responsibilities caring for his mother and transporting her to the hospital.

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¶ 38 At some point, defendant became aware that Tate was abusing Diamond. He heard what he described as a “whipping” sound coming from the bedroom. When he entered, he saw Tate spanking Diamond with a belt. He asked Tate, “What are you doing?,” and she stopped. Tate promised she would not do it again. Two to three weeks later, he again witnessed Tate spanking Diamond with a belt. He told Tate to leave his apartment and dropped her and Diamond off at a friend’s house. When he returned home that evening, Tate, her sister, her friend, and Diamond were outside his apartment. He allowed Tate and Diamond to stay at the apartment again.

¶ 39 Afterward, he continued to observe abuse marks on Diamond, specifically “whip marks” on her legs. He also noticed that Tate would sometimes leave Diamond alone in the bathtub. Eventually, he again told Tate and Diamond to leave, after observing “whip marks” on Diamond’s arm. He drove them to Tate’s friend’s house. He did not recall where he went after dropping them off but stated that he did not return home immediately. When he eventually arrived at his apartment, Tate and Diamond were in the hallway of his building. He allowed them back in because he cared about Diamond. He described Tate as an angry, neglectful mother. He did not call the police or child protection services because Tate, her friends, and her sister reassured him that the abuse would not continue.

¶ 40 On September 19, 1995, defendant went to work in the morning and left around five in the evening. He went to his cousin’s house and spent time with his son for about two to three hours. He then went to his mother’s house to care for her. At approximately one in the morning on September 20, 1995, he received a phone call from his brother. He left his mother’s house about twenty minutes later and went to a friend’s house, where he stayed for approximately two hours. He returned home at around three in the morning.

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¶ 41 Defendant testified that he normally gave Tate and Diamond the bedroom and slept in the front room. That night, he heard a small cry coming from the bedroom. In the bedroom, Tate was sitting on the bed and Diamond was in her car seat. Defendant stated that this was unusual because Diamond did not normally sleep in the car seat at night. He removed her from the car seat and placed her in the bed. When Tate objected, he returned Diamond to the car seat. He initially went to the front room to sleep, but Tate convinced him to sleep in the bed. Diamond continued to whine, and defendant asked Tate, "What's wrong with her?" Tate responded that nothing was wrong with Diamond. He thought Tate might not have fed Diamond, as she often failed to do so. Tate told him to put Diamond in the front room, and he did.

¶ 42 He admitted that at some point that night, he spanked Diamond. She continued to fuss in the other room, which agitated Tate. Tate said, "I'm going to go in there, she better be quiet." They both went into the front room. Defendant removed Diamond from the chair and placed her on the carpeted floor. He then spanked her on her butt a little and put her back in the car seat. He and Tate then went to sleep in the bedroom. He later awoke to Tate returning to the bedroom and heard Diamond awake in the front room. He remembered Tate saying, "I'm going to go whip Diamond," at some point during the evening. He went back to sleep and woke up around eight o'clock. Diamond was still in her car seat, and he believed she was awake because her eyes appeared open. He then told Tate to call 911. He picked up Diamond and carried her to the bed. He listened for a heartbeat and attempted to perform mouth-to-mouth resuscitation.

¶ 43 The police arrived and attempted to revive Diamond. Defendant went to the hospital, where Diamond was pronounced dead. He then went to the police station to speak with the police. He testified that he did not spank Diamond that evening to discipline her but rather to soothe her. He clarified that he told Coyne it was a possibility that she hit her head on the car

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seat and the carpeted floor. He testified that they tied socks onto Diamond's hands to prevent her from scratching her face. He stated that he did not intend to kill Diamond and that he did not commit any act that created a strong probability of death or great bodily harm. He stated that he did not do anything other than spank Diamond on the butt.

¶ 44 On cross-examination, defendant denied the statements in his written statement and testified that "his mind was not there" when he made them. He did not distinguish between the words "spank," "whup," and "whip." He also did not recall making some of the statements attributed to him in the written statement. He admitted that he did not see Tate hit Diamond on September 20, 1995. He admitted that he never told Barber that he saw Tate hitting Diamond, but he thought he told Coyne. Defendant testified that he did not have an opportunity to read the written statement and that Coyne did not read it to him. He denied making corrections to the statement. When he told Coyne that he spanked Diamond, he meant a soft little pat. He agreed that the injuries caused to Diamond could not have been caused by a soft little pat. He further denied tying Diamond to the car seat and denied ever seeing blood on the car seat or the contusions and bruises on Diamond's head. He also denied seeing the bruises on her back and the cuts on her buttocks. He denied giving Diamond those injuries. He testified that he only softly spanked her on her buttocks and demonstrated a soft patting motion to the court. On redirect examination, he admitted that he signed the written statement but stated that he did not review it. He clarified that his demonstration to the court reflected how he had spanked Diamond throughout mid-May.

¶ 45 The parties stipulated that on December 9, 1994, Diamond was admitted to the hospital for a near drowning, pneumonia, and child neglect. Tate had left her unattended in a bathtub.

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Tate claimed that she had left Diamond alone for one to two minutes, and upon her return, found Diamond face down in the water.

¶ 46 Following the stipulation, the defense rested.

¶ 47 D. Closing Arguments

¶ 48 Prior to the start of closing arguments, the circuit court instructed the jury, “At this time the lawyers have the opportunity of making final arguments to you. What the lawyers say is not evidence and should not be considered evidence. *** After you have heard arguments, I will instruct you on the law***.” The State then argued in closing:

The evidence is in, and we have an opportunity to make our final arguments to you. I would like to thank you on behalf of the People of the State of Illinois for undertaking this solemn, serious task. You swore when you took your oath that you would follow the law and that you would follow the facts, and we’re trusting you that you will do that.

You know Diamond Shaw didn’t have much of an opportunity in this. Her life was sort of life, well, that’s good enough for her, and we believe that if you follow your oath, that if you promise—if you do what you promised to do, that Diamond Shaw will get justice today, that she will get more than that’s good enough.

“All over this world on September 20, 1995, parents put their babies down to bed, and in order to chase away the boogie man and the monsters that lurk under the bed, they sing them lullabies, they read them fairy tales, and they whisper sweet dreams. On September 20, Diamond Shaw didn’t get a fairy tale. Her life was a horror story, and on September 20, Diamond Shaw didn’t have any wishes for sweet dreams. That night was a nightmare come true, and on September 20, the boogiemane wasn’t chased away, and the monsters wasn’t vanished from underneath the bed. Melvin Hammond may be a prince of a man among his family and friends, but to Diamond Shaw, he was a monster. She was alone, she was helpless, she was hopeless. She’s not alone anymore, and we’re hopeful that you follow your oath, and if you follow your oath, you will find the defendant guilty of first degree murder because he murdered Diamond Shaw.

Sweet dreams Diamond.”

¶ 49 Trial counsel argued in closing:

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"Let me say at the very outset that among the facts that you have to consider is the statements that Mr. Hammond gave sometime within a day and a half of his arrest when he spoke to Investigator Barber, State's Attorney Brian Holmes, and State's Attorney John Coyne. You will get the written statement that was given to John Coyne. We are telling you candidly that is the facts of those events that you should consider. Ask yourself what's more accurate? Something that you have said three times shortly after an occurrence or something that you testify to almost four years after an event when you've had all that time to think about Lord knows what?

Doctor Jones also talked about how the injuries that led to her death occurred [some time] between one to 12 hours before. The end of her cross-examination she admitted, agreed that there was the possibility of up to 12 hours before, and then ask yourself who was home 12 hours before. Was it Michelle Tate? Or was it Melvin Hammond?

The choice should be between knowledge of strong probability of great bodily harm and recklessness of involuntary manslaughter, and with respect to involuntary manslaughter, you will be given three instructions on that. One is the definition of involuntary manslaughter; two is the issues involved in involuntary manslaughter; and three is the definition of recklessness. Recklessness alone will be defined for you in the instructions. Intent and knowledge will not be, but recklessness you will have before you, and Melvin, let me say to you, you should have done something to stop her death. You failed to take that step, and that was recklessness, and he shouldn't have spanked her that night. That was recklessness, and that's involuntary manslaughter, and that's the verdict you should return."

¶ 50

The State argued in rebuttal:

"This case is not about involuntary manslaughter. This case isn't about an accident. It's not about an intended act. It's about an isolated incident. It's about a monster that comes into the night and steals our kids. It's about a guy six foot two, 175 pounds, had no qualms about beating the hell out of that baby.

This is not about bottles and not about boxes. You have heard counsel in opening statements tell you put things in their little boxes. Ladies and gentlemen, you now know the law, the law of responsibility. Anything that pertains to Michelle Tate, anything the pertains to Melvin Hammond gets put in one box together. They're responsible, the law of responsibility, the law of accountability, if you believe the garbage he told you today, if you believe that garbage that she had her hands on that belt, the law of responsibility puts this guys on that belt as well. They're both responsible.

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The defense now wants you to believe his statement, and the reason they want you to believe his statement to police is because he got on the witness stand, and he got caught lying. They want you to believe his statement, but disregard the things that he got up there and lied. Remember that when you get that statement back there, read that statement, and you will see that never, never did he tell a police official or a State's Attorney or in his own confession even say that Michelle beat the child that last day. They want you to disregard what he said on the stand, but they want you to overlook what he said in his statement. Do not do that.

Ladies and gentlemen, this is a night of ritual in bedrooms across our country. Each night children go to bed including babies, and they're scared, and they wait for their parents to reassure them and they crawl under the covers, and they're afraid of the monsters and they're afraid of the boogie man, and each night parents, like ourselves, go in there, you hug the kid, kiss the kid, tuck them into the covers, then you reassure them, you're going to see that Diamond Shaw died with her eyes open, and you're going to see her eyes, saw the boogie man come that night, just like other nights, the monsters came, and her eyes were open, and the last person she saw coming to her was this guy armed with a belt, the boogie man, the monster six, two, 175. She heard those awful footsteps coming, and she cried out because the monsters were coming again. Doctor Jones told you that some of those injuries were so old, so you know that even that little child knew what was about to [happen]. When that child cried out, she cried out for mom who didn't care. She cried out for father who wasn't there. Michelle Tate just stayed in bed. That little child cried, she cried out, her eyes are open, and she saw, she's strapped down, she's tied down, and she saw the boogie man come one final time. The final picture you will see of Diamond Shaw, are restful position almost like she's asleep, her hands folded almost as if she's praying, and each night is a prayer we all say with our kids, Now I lay me down to sleep, I pray the Lord my soul to keep, and if I die before I wake, if I die before I wake—She now rests in that coffin. The monster's been caught. Don't let that monster go. He's guilty of murder."

¶ 51

E. Jury Instruction

¶ 52

The circuit court then instructed the jury:

The law that applies to this case is stated in these instructions, and it is your duty to follow all of them. You must not single out certain instructions and disregard others.

It is your duty to determine the facts, and to determine them only from the evidence in this case. You are to apply the law to the facts and in this way decide the case.

Neither sympathy nor prejudice should influence you.

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The evidence which you should consider consists only of the testimony of the witnesses and the exhibits which the court has received.

Only you are the judges of the believability of the witnesses and of the weight to be given to the testimony of each of them. In considering the testimony of any witness, you may take into account his ability and opportunity to observe, his memory, his manner while testifying, and interest, bias, or prejudice he may have, and the reasonableness of his testimony considered in the light of all the evidence in the case.

You should judge the testimony of the defendant in the same manner as you judge the testimony of any other witness.

*** Neither opening statements nor closing arguments are evidence, and any statements or arguments made by the attorneys which are not based on the evidence should be disregarded.”

With respect to the issues in this case, the jury received Illinois Pattern Jury Instructions Nos. 1.02 (jury is the sole judge of the believability of witnesses), 1.03 (arguments of counsel), 2.01I (first degree murder and involuntary manslaughter) 3.11 (prior inconsistent statements), 5.01 (recklessness), 5.03 (accountability), and 7.07 (definition of involuntary manslaughter). See Illinois Pattern Jury Instructions, Criminal, Nos. 1.02, 1.03, 2.01I, 3.11, 5.01, 5.03, and 7.07 (3d ed. Supp. 1996) (hereinafter IPI Criminal 3d (Supp. 1996)).

¶ 53

E. Verdict and Sentencing

¶ 54

The jury found defendant guilty of first degree murder. The circuit court determined that defendant was eligible for the death penalty based on Diamond’s age and the presence of exceptionally brutal and heinous conduct, but concluded that mitigating evidence weighed against imposing the death penalty. The court sentenced him to a mandatory life sentence. On appeal, this Court affirmed defendant’s conviction but vacated his sentence and remanded for resentencing because his sentence violated the single subject clause. *People v. Hammond*, No. 1-99-3337 (2001) (unpublished summary order under Illinois Supreme Court Rule 23(c)).

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¶ 55 At resentencing, the circuit court sentenced defendant to 75 years' imprisonment, again referencing Diamond's age and the brutal and heinous nature of defendant's conduct. Defendant appealed, arguing his sentence was grossly disproportionate to Tate's 25-year sentence resulting from her guilty plea following trial, but before the jury reached a verdict. This Court affirmed defendant's sentence. *People v. Hammond*, No. 1-1-03-0823 (2006) (unpublished order under Illinois Supreme Court Rule 23).

¶ 56 F. Postconviction Proceedings

¶ 57 On July 20, 2007, defendant filed a *pro se* postconviction petition, asserting that appellate counsel was ineffective for failing to argue that trial counsel provided ineffective assistance by telling the jury to believe defendant's written statement over his trial testimony. The circuit court advanced the petition to the second stage and appointed counsel. Postconviction counsel filed an Illinois Supreme Court Rule 651(c) (eff. July 1, 2017) certificate and a motion to withdraw. The motion to withdraw failed to address defendant's claim that trial counsel was ineffective for not calling a medical expert to testify regarding the timing of Diamond's fatal injuries. The circuit court granted postconviction counsel's motion to withdraw. On January 15, 2010, defendant filed a supplemental petition. The State filed a motion to dismiss both petitions. The circuit court granted the State's motion to dismiss, and defendant appealed.

¶ 58 On appeal, this Court determined that postconviction counsel's failure to address defendant's ineffective assistance claim regarding the medical expert demonstrated that she failed to ascertain his claims. *People v. Hammond*, 2012 IL App (1st) 101096-U, ¶ 25. This Court held that postconviction counsel failed to comply with Rule 651(c) and remanded for further second-stage proceedings. *Id.* ¶ 28.

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¶ 59 On August 8, 2013, defendant filed an amended *pro se* petition again alleging that appellate counsel was ineffective for failing to raise trial counsel's error in urging the jury to credit his written statement over his testimony. He also asserted that appellate counsel should have challenged trial counsel's failure to object to the State's closing argument, which invoked the passions of the jurors and misstated the law of accountability.

¶ 60 Postconviction counsel filed a Rule 651(c) certificate, which stated that she would proceed on defendant's *pro se* petitions. The State filed a motion to dismiss. On April 22, 2022, defendant filed a supplemental postconviction petition. A new postconviction counsel was appointed. Postconviction counsel filed an amended petition incorporating the *pro se* petitions by reference. The amended petition also included both claims regarding trial counsel's closing argument and the State's closing argument. Additionally, postconviction counsel filed verification affidavits from defendant and a 651(c) certificate, which affirmed that he consulted with defendant, examined the record, and prepared an amended petition that adequately set forth defendant's claims. The State filed a motion to dismiss and postconviction counsel stood on the amended petition. The circuit court granted the State's motion to dismiss, and defendant appealed.

¶ 61 II. ANALYSIS

¶ 62 On appeal, defendant raises numerous issues stemming from the dismissal of his postconviction petition. Defendant first argues that he made a substantial showing that appellate counsel was ineffective for failing to argue trial counsel's ineffectiveness during closing arguments. Specifically, he contends that trial counsel was ineffective during closing argument by (1) discrediting defendant's trial testimony and (2) conceding his guilt under a theory of accountability. He further asserts that trial counsel was ineffective for failing to object to the

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State's closing arguments when the State (1) implied that the jurors' oaths required them to convict defendant, (2) appealed to the jurors' emotions, and (3) misstated the law of accountability.

¶ 63 Defendant next argues that postconviction counsel provided unreasonable assistance by (1) failing to obtain supporting evidence, (2) failing to overcome procedural forfeiture, and (3) failing to allege prejudice. We address each of these eight issues in detail below.

¶ 64 A. Ineffective Assistance of Appellate Counsel for Failing to Allege Trial Counsel's Ineffectiveness

¶ 65 On appeal, defendant contends that he made a substantial showing of ineffective assistance of appellate counsel for failing to argue that trial counsel was ineffective both for making certain comments during closing argument and for failing to object to the State's closing argument.

¶ 66 The Post-Conviction Hearing Act ("Act") (725 ILCS 5/122-1 et seq. (West 2006)) establishes a three-stage process for criminal defendants to challenge their convictions based on substantial violations of their constitutional rights. *People v. Hodges*, 234 Ill. 2d 1, 9 (2009). At the first stage, the circuit court may dismiss the petition if it is frivolous or patently without merit. 725 ILCS 5/122-2.1(a)(2) (West 2007). If the petition advances to the second stage, the court may appoint counsel for an indigent defendant, and the State may file a motion to dismiss or answer. *Id.* § 122-4, 122-5. At this stage, the circuit court must determine whether the petition and supporting documents make a substantial showing of a constitutional violation. *People v. Domagala*, 2013 IL 113688, ¶ 33. This stage tests the legal sufficiency of the petition. *Id.* ¶ 35. The petitioner's factual allegations are taken as true unless affirmatively refuted by the record. *Id.* The question is whether those allegations, if proven at an evidentiary hearing, would establish

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a constitutional violation and entitle the petitioner to relief. *Id.* We review *de novo* the circuit court's dismissal of a second-stage petition. *People v. Pendleton*, 223 Ill. 2d 458, 473.

¶ 67 To prevail on a claim of ineffective assistance of counsel, “a defendant must show that counsel's performance was objectively unreasonable under prevailing professional norms and that there is a ‘reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different.’ ”. *Domagala*, 2013 IL 113688, ¶ 36 (quoting *Strickland v. Washington*, 466 U.S. 668, 687 (1984)). Failure to satisfy either prong precludes a finding of ineffectiveness. *People v. Simpson*, 2015 IL 116512, ¶ 35. This same standard applies to claims of ineffective assistance of appellate counsel. *People v. Caldwell*, 2023 IL App (1st) 221586, ¶ 18. A defendant raising such a claim must show that appellate counsel's performance was deficient and that, but for that deficiency, there is a reasonable probability the appeal would have succeeded. *Id.* “Appellate counsel is not obligated to brief every conceivable issue on appeal, and it is not incompetence of counsel to refrain from raising issues which, in his or her judgment, are without merit, unless counsel's appraisal of the merits is patently wrong.” *People v. Simms*, 192 Ill. 2d 348, 362 (2000). Thus, the prejudice inquiry requires the reviewing court to assess the merits of the underlying issue, because a defendant is not prejudiced by appellate counsel's failure to raise a claim that lacks merit. *Id.* Claims of ineffective assistance of counsel must be evaluated under the totality of the circumstances specific to each individual case. *People v. Shatner*, 174 Ill. 2d 133, 147 (1996).

¶ 68 1. *Trial Counsel's Alleged Ineffectiveness in Closing*

¶ 69 Defendant contends that trial counsel was ineffective during closing argument by (1) discrediting defendant's trial testimony and (2) conceding his guilt under a theory of accountability.

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¶ 70 Judicial review of counsel's performance is highly deferential, and there is a strong presumption that counsel's conduct falls within the broad range of reasonable professional assistance. *People v. Manning*, 241 Ill. 2d 319, 334 (2011). The burden is on the defendant to overcome the presumption that the challenged conduct could be considered sound trial strategy under the circumstances. *Id.* Reviewing courts should be reluctant to second-guess strategic decisions, even if they appear questionable in hindsight. *Id.*

¶ 71 Counsel is afforded wide latitude in closing argument. *People v. Burgess*, 2015 IL App (1st) 130657, ¶ 158. "Counsel's decision to argue a particular defense theory during closing argument is a matter of trial strategy." *People v. Milton*, 354 Ill. App. 3d 283, 289 (1st Dist. 2004). To establish ineffective assistance based on comments made during closing argument, the defendant must overcome the strong presumption that counsel was competent and that the remarks were part of a reasonable trial strategy. *People v. Davis*, 356 Ill. App. 3d 725, 730 (1st Dist. 2005). A reviewing court assesses the reasonableness of counsel's conduct from counsel's perspective considering the totality of the circumstances in the case. *Milton*, 354 Ill. App. 3d at 289. Even when counsel concedes guilt, prejudice is not presumed unless the strategy constitutes a complete failure to subject the prosecution's case to meaningful adversarial testing. *Id.* at 290.

¶ 72 At the outset, we note that trial counsel subjected the State's case to meaningful adversarial testing. Trial counsel put forth a theory of defense—involuntary manslaughter as opposed to first degree murder—cross-examined the State's witnesses, presented witnesses to testify regarding defendant's reputation for peacefulness and as a good caretaker, and successfully moved the court to instruct the jury on the lesser offense of involuntary manslaughter. Involuntary manslaughter requires a less culpable mental state, recklessness,

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whereas first degree murder requires an intentional mental state. *People v. Robinson*, 232 Ill. 2d 98, 105 (2008).

¶ 73 a. Discrediting Defendant's Trial Testimony

¶ 74 Defendant contends that trial counsel was ineffective during closing argument by discrediting defendant's trial testimony.

¶ 75 To establish ineffective assistance based on comments made during closing argument, the defendant must overcome the strong presumption that counsel was competent and that the remarks were part of a reasonable trial strategy. *People v. Davis*, 356 Ill. App. 3d 725, 730 (1st Dist. 2005). A reviewing court assesses the reasonableness of counsel's conduct from counsel's perspective considering the totality of the circumstances in the case. *Milton*, 354 Ill. App. 3d at 289.

¶ 76 Trial counsel's strategy throughout the proceedings was reasonable and grounded in the circumstances presented at trial. Defendant attempted to downplay his involvement in Diamond's death by offering testimony that sought to minimize his culpability. However, this testimony was directly contradicted by his prior written statement to police and by the medical evidence, creating a clear inconsistency that undermined his credibility. A review of the trial transcripts indicates that trial counsel made a strategic decision to urge the jury to disregard defendant's testimony because it was, at best, inconsistent and, at worst, wholly incredible. Given the weakness of defendant's testimony, it was reasonable for counsel to attempt to mitigate its damaging effect by distancing the defense from it entirely. Defendant's argument is internally inconsistent: he claims trial counsel was ineffective for instructing the jury to disregard his testimony, yet it was defendant's own erratic and conflicting statements which undermined an otherwise sound strategy of pursuing a lesser offense of involuntary manslaughter. In fact, in

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his *pro se* petition, defendant stated “The defendant now understands partly that his trial counsel was trying to seek a conviction for a lesser offense***.”

¶ 77 In this context, trial counsel’s decision to direct the jury to disregard defendant’s testimony during closing argument was reasonable. This strategy allowed the jury to consider a less culpable mental state, such as recklessness, in support of an involuntary manslaughter conviction. Maintaining this strategy, even considering defendant’s testimony, was not unreasonable. Given the evidence presented at trial, pursuing a verdict of involuntary manslaughter was a sound defense strategy, as a not guilty verdict was not a reasonable probability. *People v. Little*, 2021 IL App (1st) 181984, ¶ 52 (generally, counsel’s choice of which defense theory to pursue is a matter of trial strategy).

¶ 78 b. Accountability

¶ 79 Additionally, defendant contends that trial counsel’s comments reprimanding him in front of the jury constituted a concession of guilt based on accountability. “A person is legally accountable for the conduct of another when either before or during the commission of an offense, and with the intent to promote or facilitate that commission, he or she solicits, aids, abets, agrees, or attempts to aid that other person in the planning or commission of the offense.” 720 ILCS 5/5-2(c) (West 1994). “However, mere presence at the scene of a crime and knowledge that a crime is being committed are insufficient to establish accountability.” *People v. Craigen*, 2013 IL App (2d) 111300, ¶ 33. Trial counsel’s comments during closing, that defendant should have intervened to prevent Diamond’s death, did not concede defendant’s accountability for murder. Rather, trial counsel argued defendant’s failure to intervene despite knowledge of ongoing abuse was reckless, as was defendant’s act of spanking Diamond given the abuse she allegedly suffered previously at Tate’s hands. Contrary to defendant’s assertion, trial

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counsel's remarks, viewed in context and based on the totality of the circumstances, aligned with the defense theory of involuntary manslaughter. Accordingly, trial counsel's comments represented a reasonable trial strategy rather than a concession of guilt based on accountability.

¶ 80 c. Defendant Cannot Show Prejudice Resulted From Closing Argument

¶ 81 Assuming, *arguendo*, that trial counsel's remarks during closing constituted deficient performance, defendant would still be required to demonstrate prejudice resulting from counsel's remarks. *Simpson*, 2015 IL 116512, ¶ 35. Defendant has failed to show a reasonable probability that, absent counsel's remarks during closing argument, the outcome of the trial would have been different. Given all the evidence of defendant's guilt, including his prior written statement to police, the medical evidence, the fact that the jury heard and considered his testimony, and the trial court's instruction that opening and closing arguments are not evidence, we cannot conclude that, but for counsel's allegedly deficient performance, there is a reasonable probability that the outcome of the trial would have been different.

¶ 82 2. Trial Counsel's Alleged Ineffectiveness for Failing to Object to State's Closing
Argument

¶ 83 Defendant argues that trial counsel was ineffective for failing to object to the State's closing argument when the State (1) implied that the jurors' oaths required them to convict defendant, (2) appealed to the jurors' emotions, and (3) misstated the law of accountability.

¶ 84 Decisions concerning what to object to and when to object are matters of trial strategy and are therefore entitled to substantial deference. *People v. Bell*, 2021 IL App (1st) 190366, ¶ 73. "Prosecutors are afforded wide latitude in closing argument." *People v. Wheeler*, 226 Ill. 2d 92, 123 (2007). During closing argument, the prosecutor may comment on the evidence and suggest any fair and reasonable inferences it supports, even if those inferences portray the

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defendant in a negative light. *People v. Perry*, 224 Ill. 2d 312, 347 (2007). Reviewing courts assess the closing argument in its entirety, rather than isolating specific phrases or comments. *Id.* A reviewing court will find reversible error only if the defendant shows that the improper remarks were so prejudicial that they denied a fair trial or caused the verdict to be based on the error. *People v. Jackson*, 2020 IL 124112, ¶ 83. “The showing of *Strickland* prejudice in this context is similar to the prejudice that establishes reversible error for improper prosecutorial remarks: whether the guilty verdict resulted from trial counsel’s failure to object.” *Id.* ¶ 91.

¶ 85

a. Improper Remarks

¶ 86

At the outset, we agree with defendant that the State’s comments implying that the jurors would violate their oaths if they failed to convict defendant were improper. See *People v. Nelson*, 193 Ill. 2d 216, 227 (2000). The State’s references to him as a “monster” and the “boogie man” in the context of Diamond’s final prayer also appear to have been improper. While references to defendant as a “monster” may have been supported by the evidence (See *People v. Burton*, 338 Ill. App. 3d 406, 419-20 (1st Dist. 2003)), the reference to him as the “boogie man” in the context of bedtime rituals and prayers only served the purpose to inflame the emotions of the jurors which is improper (See *People v. Wheeler*, 226 Ill. 2d 92, 128 (2007)). However, our agreement with defendant on this issue ends there. As explained more fully below, any impropriety in the State’s remarks constituted harmless error because the remarks did not influence the verdict.

¶ 87

The State’s remarks about the law of accountability appeared less as an effort to illustrate the law (see *People v. Garcia*, 2019 IL App (2d) 161112, ¶ 37), and more as a statement that both defendant and Tate were responsible for Diamond’s death. Accordingly, given their context, the State’s comments on accountability were not improper.

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¶ 88 b. Defendant Cannot Show Prejudice Resulted from Counsel's Failure to Object

¶ 89 Still, our finding that some of the State's remarks were improper does not end the analysis. Defendant must still demonstrate that his guilty verdict resulted from trial counsel's failure to object to those improper comments. Put another way, he must show that the State's remarks constituted a material factor in his conviction.

¶ 90 Even assuming, *arguendo*, that all the State's remarks were improper, the ultimate issue with defendant's argument is that he cannot establish prejudice from the State's remarks. Defendant needed to establish that "the improper remarks constituted a material factor in defendant's conviction." *Wheeler*, 226 Ill. 2d at 123. The improper remarks were located in approximately seven paragraphs of the State's closing argument which encompassed approximately twenty one pages of trial transcripts. See *People v. Runge*, 234 Ill. 2d 68, 143 (2009) (we consider the brevity of the comments in relation to the overall length of the closing arguments when assessing their prejudicial impact). The circuit court also instructed the jury on what to properly consider before and after the closing arguments See *Jackson*, 2020 IL 124112, ¶ 87 (we also consider that the trial court instructed the jury to disregard any closing argument statements not based on the evidence). Additionally, the jury received instructions on the law of accountability, and "[i]mproper arguments can be corrected by proper jury instructions, which carry more weight than the arguments of counsel." *People v. Green*, 2017 IL App (1st) 152513.

¶ 91 Given all the evidence of defendant's guilt, including his prior written statement to police, the medical evidence, the trial court's instruction that opening and closing arguments are not evidence, the jury's instructions on the law of accountability, and the brevity of the State's remarks in the context of its entire closing argument, we cannot conclude that the State's remarks had a material effect on the jury's verdict.

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¶ 92 3. Defendant Cannot Show That Appellate Counsel Was Ineffective in Failing to Raise
the Foregoing Meritless Claims Regarding Trial Counsel's Ineffectiveness

¶ 93 We conclude this analysis by reiterating the framework under which defendant raises all these issues, which is that appellate counsel was ineffective for failing to raise them on direct appeal. To prevail on such a claim, a defendant must show that appellate counsel's performance was deficient and that, but for that deficiency, there is a reasonable probability the appeal would have succeeded. *People v. Caldwell*, 2023 IL App (1st) 221586, ¶ 18. "Appellate counsel is not obligated to brief every conceivable issue on appeal, and it is not incompetence of counsel to refrain from raising issues which, in his or her judgment, are without merit, unless counsel's appraisal of the merits is patently wrong." *People v. Simms*, 192 Ill. 2d 348, 362 (2000). Based on our analysis above, appellate counsel's appraisal of the merits of defendant's claims was not patently wrong, and appellate counsel was therefore not deficient for failing to raise them. Likewise, there is no reasonable probability that these issues would have been successful on appeal.

¶ 94 B. Unreasonable Assistance of Postconviction Counsel

¶ 95 Defendant argues that postconviction counsel provided unreasonable assistance by (1) failing to obtain supporting evidence, (2) failing to overcome procedural forfeiture, and (3) failing to allege prejudice. We address each issue in detail below.

¶ 96 The right to counsel in postconviction proceedings is derived from statute. *People v. Flores*, 153 Ill. 2d 264, 276 (1992); see 725 ILCS 5/122-4 (West 2018). Accordingly, postconviction petitioners are guaranteed only the level of assistance provided for by the Act, which our supreme court has determined to be a reasonable level of assistance. *People v. Turner*, 187 Ill. 2d 406, 410 (1999). Under the lower reasonable assistance standard required in

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postconviction proceedings, Illinois Supreme Court Rule 651 (eff. July 1, 2017) significantly limits what postconviction counsel is required to do. *People v. Custer*, 2019 IL 123339, ¶ 32. To ensure that postconviction petitioners receive reasonable assistance, Rule 651(c) requires postconviction counsel to perform the following duties:

“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).

Substantial compliance with the rule is mandatory. *People v. Addison*, 2023 IL 127119, ¶ 21.

¶ 97 The filing of a Rule 651(c) certificate creates a rebuttable presumption that counsel provided reasonable assistance. *Id.* Rule 651(c) only requires postconviction counsel to certify that they completed the specific, limited tasks outlined in the rule. *Custer*, 2019 IL 123339, ¶ 38. Counsel is not required to strengthen every claim in the petitioner’s *pro se* postconviction petition, regardless of its legal merit, or to present every witness or piece of evidence the petitioner believes might support their case. *Id.* A 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. *People v. Wallace*, 2016 IL App (1st) 142758, ¶ 27. Defendant bears the burden of overcoming this presumption by demonstrating his attorney’s failure to substantially comply with the duties mandated by the rule. *Addison*, 2023 IL 127119, ¶ 21.

¶ 98 1. *Failure to Attach Supporting Evidence*

¶ 99 Defendant alleges that postconviction counsel should have included an affidavit from Reilly, an affidavit from an expert regarding the timing of Diamond’s death, an affidavit from Dr. Kim, letters written to defendant from Tate, Crull’s police report, the court’s file of jury

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selections or trial counsel's records, an affidavit from trial counsel or the prosecutors, or an affidavit from defendant.

¶ 100 Again, 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. *Wallace*, 2016 IL App (1st) 142758, ¶ 27. Furthermore, counsel is not required to strengthen every claim in the petitioner's *pro se* postconviction petition, regardless of its legal merit, or to present every witness or piece of evidence the petitioner believes might support their case. *Custer*, 2019 IL 123339, ¶ 38. The failure to attach either defendant or trial counsel's affidavit does not constitute unreasonable assistance of postconviction counsel. *People v. Hunt*, 2023 IL App (2d) 220153, ¶ 28. Accordingly, we presume that postconviction counsel made a good faith effort to obtain this supporting evidence but was unable to do so.

¶ 101 *2. Failure to Amend to Overcome Forfeiture*

¶ 102 Defendant argues that postconviction counsel provided unreasonable assistance by failing to overcome procedural forfeiture. He specifically argues that postconviction counsel failed to overcome forfeiture by not explicitly arguing that the appellate counsel was ineffective for failing to raise his claim that "the court erred and abused [its] discretion because it relied on the State's theory during sentencing rather than the evidence."

¶ 103 In making this argument, defendant claims that this claim is distinct from his claim that appellate counsel was ineffective for failing to argue that the sentencing court abused its discretion in finding his conduct brutal and heinous. However, this argument is clearly rebutted by an examination of defendant's 2010 *pro se* postconviction petition.

¶ 104 In his 2010 petition, defendant raises two separate claims, which are numbered (1) and (2). The first alleges that appellate counsel was ineffective for failing to argue that the sentencing

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court abused its discretion in finding his conduct brutal and heinous. The second alleges that appellate counsel was ineffective for failing to argue that the circuit court erred in denying his motion for a directed verdict. Both claims are best characterized as rambling; the first spans seven pages, and the second spans eight.

¶ 105 Defendant now asserts that a distinct third claim appears within the body of the first. But the one sentence he now isolates as a separate claim is materially indistinguishable from other statements made in support of the first claim. For example, on the first page of that claim, he writes: “Defendant’s [a]ppellate counsel could have [a]rgued the fact is the State failed to [p]resent any sufficient evidence during the [d]efendant’s trial or sentencing hearing to prove beyond a reasonable doubt that the [d]efendant’s conduct or [b]ehavior was indeed exceptionally [b]rutal and heinous indicative of wanton and cruelty [sic] as a matter of law.” This sentence, like the one he now characterizes as an independent claim, simply reiterates his broader argument that the sentencing court abused its discretion in finding his conduct brutal and heinous. Furthermore, on the page following the sentence he now identifies as a distinct claim, he concludes this line of argument by asking the postconviction court to rely on the evidence in determining whether his conduct was brutal and heinous. Put simply, this was all one claim.

¶ 106 Accordingly, postconviction counsel provided reasonable assistance by arguing that appellate counsel was ineffective for failing to raise on direct appeal that the sentencing court erred by finding defendant’s conduct brutal and heinous. In arguing ineffective assistance of appellate counsel, postconviction counsel also overcame forfeiture of that claim. Furthermore, postconviction counsel incorporated all of defendant’s *pro se* petitions into the amended petition, and defendant had already overcome forfeiture by framing this issue as one of ineffective assistance of appellate counsel.

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¶ 107

3. *Failure to Argue Prejudice*

¶ 108

Defendant argues that postconviction counsel provided unreasonable assistance by failing to allege prejudice.

¶ 109

In making this argument, defendant claims that *People v. Dixon*, 2018 IL App (3d) 150630, is analogous to this case. In *Dixon*, postconviction counsel filed an amended postconviction petition which contained conclusory allegations of ineffective assistance of counsel. *Dixon*, 2018 IL App (3d) 150630, ¶¶ 5, 17-18. The Third District determined that since the amended petition failed to allege specific facts to support its general claims, that the amended petition was not in proper legal form. *Id.* ¶ 20.

¶ 110

Here, postconviction counsel incorporated by reference defendant's four prior *pro se* petitions. In total, defendant's *pro se* petitions included approximately 104 pages of factual allegations supporting his claims. Defendant argues that this is insufficient. He asserts that because some of his claims did not explicitly use the word "prejudice," they failed to adequately allege an essential element of ineffective assistance of counsel. However, this argument overlooks the holding in *Dixon* and the applicable standard at second stage of postconviction proceedings. The *Dixon* court did not focus on the lack of a conclusory allegation of prejudice in its determination that postconviction counsel provided unreasonable assistance, rather, it focused on the failure of counsel to allege *any* specific facts in support of the claims. *Dixon*, 2018 IL App (3d) 150630, ¶ 21. This holding is consistent with the standard at second stage which asks whether the petition's factual allegations establish or show a constitutional violation. *Domagala*, 2013 IL 113688, ¶ 35.

¶ 111

Accordingly, postconviction counsel did not provide unreasonable assistance by incorporating defendant's factual allegations into the amended petition.

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¶ 112

CONCLUSION

¶ 113

For the reasons stated above, we affirm the judgment of the Circuit Court of Cook County.

¶ 114

Affirmed.

FILED DATE: 3/10/2023 4:18 PM 95CR2851602

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

FILED
3/10/2023 4:18 PM
IRIS Y. MARTINEZ
CIRCUIT CLERK
COOK COUNTY, IL
95CR2851602
District 6, Room 105
21823653

PEOPLE OF THE STATE OF ILLINOIS)
)
-vs.-)
)
Melvin Hammond)

Case No.:
Judge:

95CR2851602
D'Souza

NOTICE OF APPEAL

An appeal is taken from the order or judgment described below:
APPELLANT'S NAME: Melvin Hammond
APPELLANT'S ADDRESS: Illinois Department of Corrections
APPELLANT'S ATTORNEY: Office of State Appellate Defender
ADDRESS: 203 N LaSalle, Chicago, IL 60601
OFFENSE: Murder
JUDGMENT: State motion to dismiss postconviction petition granted
DATE OF JUDGMENT OR SENTENCE: March 10, 2023
SENTENCE: 75 years IDOC

Dennis Brown

Filing attorney

ORDER

IT IS ORDERED THAT the State Appellate Defender is appointed as counsel on appeal.

Order date(s): _____

ENTER: _____
JUDGE

No. 132067

IN THE

SUPREME COURT OF ILLINOIS

PEOPLE OF THE STATE OF ILLINOIS,	)	Appeal from the Appellate Court of
	)	Illinois, No. 1-23-0583.
Respondent-Appellee,	)	
	)	There on appeal from the Circuit Court
-vs-	)	of Cook County, Illinois , No. 95 CR
	)	28516 (02).
	)	
MELVIN HAMMOND,	)	Honorable
	)	Geraldine D'Souza,
Petitioner-Appellant.	)	Judge Presiding.
	)	

NOTICE AND PROOF OF SERVICE

Mr. Kwame Raoul, Attorney General, 115 S. LaSalle St., Chicago, IL 60603,
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Mr. Melvin Hammond, Register No. K76304, Joliet Treatment Center, 2848 McDonough St.,
 Joliet, IL 60431

Under penalties as provided by law pursuant to Section 1-109 of the Code of Civil Procedure, the undersigned certifies that the statements set forth in this instrument are true and correct. On February 17, 2026, the Brief and Argument was filed with the Clerk of the Supreme Court of Illinois using the court's electronic filing system in the above-entitled cause. Upon acceptance of the filing from this Court, persons named above with identified email addresses will be served using the court's electronic filing system and one copy is being mailed to the petitioner-appellant in an envelope deposited in a U.S. mailbox in Chicago, Illinois, with proper postage prepaid. Additionally, upon its acceptance by the court's electronic filing system, the undersigned will send 13 copies of the Brief and Argument to the Clerk of the above Court.

/s/Cat March

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