2026 IL App (2d) 250268-U
No. 2-25-0268
Order filed November 10, 2026

NOTICE: This order was filed under Illinois Supreme Court Rule 23(b) and is not precedential except in the limited circumstances allowed under Rule 23(e)(1).

IN THE

APPELLATE COURT OF ILLINOIS

SECOND DISTRICT

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

v.

CHESTER MCKINNEY, III, Defendant-Appellant.

Appeal from the Circuit Court of Kane County.
Honorable Bianca Camargo, Judge, Presiding.
No. 05-CF-550

JUSTICE SCHOSTOK delivered the judgment of the court.
Justices Birkett and Mullen concurred in the judgment.

ORDER

¶ 1 *Held*: The record sufficiently shows postconviction counsel's compliance with Rule 651(c).

¶ 2 Following a jury trial, defendant, Chester McKinney, was found guilty of five counts of predatory criminal sexual assault (720 ILCS 5/12-14.1(a)(1) (West 2004)) and nine counts of aggravated criminal sexual abuse (*id.* § 12-16(c)(1)(i)). Defendant was sentenced to natural life imprisonment for the predatory criminal sexual assault convictions. This court affirmed defendant's conviction and sentence on direct appeal. *People v. McKinney*, No. 2-08-1029 (Feb. 9, 2010) (unpublished order under Supreme Court Rule 23). Defendant subsequently filed a *pro se* postconviction petition under the Post-Conviction Hearing Act (Act) (725 ILCS 5/122-1 *et seq.*

(West 2010)). The petition advanced to the second stage, where the trial court granted the State's motion to dismiss. Defendant appealed, and this court reversed and remanded for further second-stage proceedings. *People v. McKinney*, 2021 IL App (2d) 180840-U (unpublished order under Supreme Court Rule 23). On remand, new postconviction counsel was appointed and filed an amended postconviction petition. The trial court granted the State's motion to dismiss all but one claim. Following an evidentiary hearing, the trial court denied the remaining claim. Defendant appeals, challenging postconviction counsel's compliance with Illinois Supreme Court Rule 651(c) (eff. July 1, 2017). We affirm.

¶ 3 I. BACKGROUND

¶ 4 As the facts are well known to the parties and set forth in detail in defendant's direct appeal, we recount only those facts relevant to this appeal. On August 4, 2005, a superseding 19-count indictment was filed against defendant, alleging various sex offenses against two minors, sisters K.D. and T.D. between the dates of October 31, 2001, and October 31, 2002. At the time of the alleged offenses, K.D. was four years old and T.D. was six years old. Prior to trial, five counts of the superseding indictment were nol-prossed, leaving five counts of predatory criminal sexual assault and nine counts of aggravated criminal sexual abuse.

¶ 5 At a hearing pursuant to section 115-10 of the Code of Criminal Procedure of 1963 (725 ILCS 5/115-10 (West 2004)), the minors' parents, stepmother, an investigator with the Child Advocacy Center (CAC), and the minors' therapists testified regarding statements the minors had made to them concerning the alleged abuse. The trial court found that statements the minors made to their father concerning the charged offenses were reliable and admissible at trial, although the father was not called to testify at trial. The minors' mother also testified regarding statements K.D. had made to her concerning the charged offenses. The trial court made no finding regarding the

admissibility of those statements, and the State did not seek to introduce them at trial. The trial court also found certain statements the minors made to their stepmother, the CAC investigator, and their therapists admissible. The stepmother was not called to testify at trial.

¶ 6 At a 2008 jury trial, the minors' therapists and the CAC investigator testified regarding statements the minors had made concerning the alleged sexual abuse. Both minors also testified at trial. The evidence established that defendant had been dating the minors' mother and, during a portion of the period in which the abuse allegedly occurred, resided with the minors in the same household.

¶ 7 Dr. Margo Marie Wolf testified that she was a board-certified family physician. In January 2002, when K.D. was four years old, K.D.'s father brought her in for an examination because he suspected sexual abuse. Dr. Wolf examined K.D.'s vaginal area but did not see an intact hymen. She testified that this could be a normal variant or could indicate that K.D. had been penetrated. Dr. Wolf acknowledged that she had no specialized training in examining patients for sexual abuse and had not used a colposcope. Dr. Darryl Link, who was tendered as an expert witness, testified that he conducted a child abuse examination of K.D. on February 13, 2002, but he did not testify regarding the findings of that examination. He further testified that he examined both K.D. and T.D. on July 5, 2005. Those examinations produced normal findings, with no signs of abuse to either minor's genitalia, including the hymen. Dr. Link testified that visible findings of abuse were rare and that the absence of such findings did not mean that abuse involving penetration had not occurred.

¶ 8 Michael Nance testified that he had pleaded guilty to a burglary charge in exchange for an agreed six-year sentence, conditioned on his testimony in defendant's case. Based on his criminal history, he had faced a possible sentence of 6 to 30 years' imprisonment. Nance testified that he

and defendant had been housed in the same cell block at the Kane County jail for a period of time. In December 2007, defendant told Nance that his fiancée had two daughters. When the older girl went to the park with the neighbors, defendant would be home alone with the younger girl. Defendant described how he would molest the girl, and the description was consistent with the minors' trial testimony and their statements to others.

¶ 9 Defendant testified on his own behalf and denied the allegations of abuse. He testified that while he was sharing a cell with Nance, he had police reports and other documents concerning his case in the cell. He would leave those documents behind when he went to church at the jail or when he had to leave for court appearances.

¶ 10 Following deliberations, the jury found the defendant guilty on all 14 counts. Defendant was sentenced to natural life imprisonment on all counts of predatory criminal sexual assault and concurrent terms of five years' imprisonment on each of the remaining counts of aggravated criminal sexual abuse. This court affirmed defendant's convictions and sentence on direct appeal. *McKinney*, No. 2-08-1029 (Feb. 9, 2010) (unpublished order under Supreme Court Rule 23). On March 30, 2011, our supreme court denied defendant's petition for leave to appeal. See *People v. McKinney*, No. 111732 (Mar. 30, 2011).

¶ 11 On October 21, 2011, defendant filed a *pro se* postconviction petition alleging ineffective assistance of counsel. The trial court advanced the petition to the second stage of proceedings. On June 29, 2017, after numerous continuances, postconviction counsel filed an amended postconviction petition. The State moved to dismiss the petition, and the trial court granted the motion. Defendant then filed *pro se* postjudgment motions, alleging that postconviction counsel failed to comply with the requirements of Rule 651(c) and provided unreasonable assistance. The trial court denied those motions, and defendant appealed.

¶ 12 On appeal, this court determined that postconviction counsel failed to comply with Rule 651(c) because he did not make the necessary amendments to defendant's *pro se* petition to adequately present defendant's claims. *McKinney*, 2021 IL App (2d) 180840-U, ¶¶ 36, 38 (unpublished order under Supreme Court Rule 23) (holding that postconviction counsel failed to raise all of defendant's claims and that the one claim he did raise lacked merit). We also noted that postconviction counsel never informed defendant when he filed the amended petition, did not provide defendant with a copy of the amended petition, did not inform defendant that the State had filed a motion to dismiss, did not appear at the hearing to argue against the State's motion, and did not inform defendant that the trial court had granted the motion until after the time for filing a notice of appeal had expired. *Id.* ¶ 41. We therefore remanded the case for further second-stage proceedings. *Id.* ¶ 43.

¶ 13 On remand, new postconviction counsel was appointed to represent defendant. On August 17, 2023, postconviction counsel filed an amended postconviction petition, raising eight claims of ineffective assistance of trial counsel for failing to: (1) present evidence that K.D.'s father had a motive to implicate defendant, including the minors' mother's testimony at the section 115-10 hearing that she was unsure whether the allegations had been fabricated because the minors' father disliked defendant, was jealous, and wanted to cause trouble for him; (2) present the minors' father's testimony from the section 115-10 hearing that K.D. initially told him defendant had not touched her, which could have been used to impeach K.D.'s testimony; (3) argue that the minors' mother had coached K.D.'s responses, where the mother testified at the section 115-10 hearing that she did not understand K.D.'s initial explanations of the abuse and had simulated various sexual acts in an attempt to understand what K.D. was describing; (4) cross-examine witnesses regarding defendant's contentious relationship with the minors' father, as revealed by the mother's testimony

at the section 115-10 hearing that the father disliked defendant and had once been charged with assaulting him; (5) present evidence from the section 115-10 hearing regarding a prior incident at a park in which a man exposed himself to the minors and forced T.D. to masturbate him; (6) call Dr. Andrew Zwolski to impeach Dr. Wolf, where Dr. Zwolski had examined K.D. near the time of the alleged offenses and his written report included a diagnosis of "rule out sexual assault," along with notations that the hymen was intact and there was no trauma or bruising; (7) present expert evidence regarding children's suggestibility and false accusations of sexual assault, particularly in light of the minors' father's alleged jealousy of and contentious relationship with defendant; and (8) allow defendant to waive a jury trial and proceed to a bench trial. The amended petition asserted that trial counsel's deficient performance was so serious that defendant was prejudiced and deprived of a fair trial. The petition also alleged that posttrial and appellate counsel were ineffective for failing to raise the foregoing claims of ineffective assistance of trial counsel.

¶ 14 Attached to the amended petition were three criminal complaints against the minors' father: one charging him with disorderly conduct at a pawn shop, one charging him with aggravated assault against the minors' mother, and one charging him with aggravated assault against defendant; the father's guilty plea to disorderly conduct; two affidavits from defendant; a medical report from Dr. Zwolski's February 1, 2002, exam of K.D., which included a diagnosis of "rule out sexual assault" and stated "the hymen was intact and there was no trauma or bruises"; and an article from a peer-reviewed medical and psychiatric journal addressing false accusations of sexual abuse by children.

¶ 15 Postconviction counsel filed a certificate of compliance with Rule 651(c), stating that counsel had reviewed defendant's *pro se* filings, the court records, and the transcripts of defendant's trial and sentencing. Counsel then stated that she "has consulted with [defendant] in

person through legal calls and by mail to the extent necessary to adequately represent his contentions of error in the proceedings and deprivation of constitutional rights and thereafter filed an [a]mended [s]uccessive [p]ost-[c]onviction [p]etition."

¶ 16 On February 7, 2024, the State filed a motion to dismiss. The State noted the claims of ineffective assistance of trial counsel raised in defendant's amended postconviction petition and acknowledged defendant's assertion that appellate counsel was ineffective for failing to raise those claims on direct appeal. The State argued that defendant had forfeited the first five claims of ineffective assistance of trial counsel because they were based on matters of record, namely, testimony presented at the section 115-10 hearing. The State acknowledged, however, that forfeiture may be excused when it results from ineffective assistance of appellate counsel. The State further argued that all eight claims of ineffective assistance of trial counsel lacked merit and that, even if the omitted evidence had been presented, the outcome of the trial would have been the same.

¶ 17 Postconviction counsel filed a response to the State's motion to dismiss. In part, counsel argued that the first five claims of ineffective assistance of trial counsel were not forfeited because defendant also alleged that appellate counsel was ineffective for failing to raise those claims on direct appeal. Counsel stood on the arguments raised in the amended petition but provided further argument that the omitted evidence was admissible, could have been used to impeach witnesses at trial, and supported defendant's claim of innocence.

¶ 18 At the hearing on the motion to dismiss, the State's arguments were consistent with those set forth in its written motion. Postconviction counsel argued that defendant was raising claims of both ineffective assistance of trial counsel and ineffective assistance of appellate counsel. She identified the eight claims of ineffective assistance of trial counsel and maintained that they were

not forfeited because defendant alleged that appellate counsel was ineffective for failing to raise the issues on direct appeal. She also discussed the favorable evidence that trial counsel should have presented at trial and argued that appellate counsel was ineffective for failing to raise those issues on direct appeal.

¶ 19 Following the hearing, the trial court dismissed all of defendant's claims except his jury waiver claim. The trial court dismissed the first five claims, finding that defendant had failed to overcome their forfeiture. Specifically, the trial court applied the cause-and-prejudice test under the fundamental fairness exception to forfeiture (see *People v. Franklin*, 167 Ill. 2d 1, 20 (1995)). It found no cause because the claims could have been raised on direct appeal. The trial court further found that defendant had not sufficiently alleged that counsel's decision not to raise the claims on direct appeal was an error that resulted in prejudice. In support, the trial court cited *People v. Mahaffey*, 194 Ill. 2d 154, 173 (2000), where our supreme court determined that, because no underlying error had occurred, the defendant could not establish the prejudice prong of the fundamental fairness exception.

¶ 20 The trial court next found that defendant had not established a substantial constitutional violation based on trial counsel's failure to call Dr. Zwolski as a witness at trial. The trial court noted that, although Dr. Zwolski could have impeached Dr. Wolf's testimony that she did not observe an intact hymen, Dr. Link had testified regarding the presence of an intact hymen. The trial court concluded that the decision not to call Dr. Zwolski was a matter of trial strategy and did not fall below an objective standard of reasonableness. The trial court further concluded that, based on the facts alleged, there was no reasonable probability that the result of the proceeding would have been different had Dr. Zwolski testified. Accordingly, the trial court concluded that defendant failed to satisfy either prong of *Strickland* standard for ineffective assistance of counsel

(see *Strickland v. Washington*, 466 U.S. 668, 687 (1984)). The trial court further noted that defendant had not attached an affidavit from Dr. Zwolski establishing what his potential testimony would have been.

¶ 21 The trial court also rejected defendant's seventh claim, which alleged ineffective assistance of counsel for failing to present expert testimony regarding child suggestibility and false accusations of sexual abuse in light of the minors' father's hostility toward defendant. The trial court found that the decision not to present such testimony was a matter of sound trial strategy. The trial court further noted that, during trial, the trial judge had acknowledged defendant's theory but expressly stated that the father's relationship with defendant was not a factor that needed to be examined. The trial court here concluded that defendant could not successfully allege prejudice based on the failure to present evidence concerning a matter that the trial judge had expressly stated did not need to be addressed. Accordingly, the trial court found that defendant had suffered no prejudice from the omission and had failed to establish a substantial constitutional violation.

¶ 22 Finally, the trial court advanced defendant's eighth claim, alleging that trial counsel refused to allow him to waive a jury trial despite his desire to proceed with a bench trial, to a third-stage evidentiary hearing. Following that hearing, the trial court concluded that the claim lacked merit. Defendant filed a timely notice of appeal.

¶ 23 II. ANALYSIS

¶ 24 On appeal, defendant argues that postconviction counsel failed to comply with Rule 651(c) because counsel's Rule 651(c) certificate was facially defective and that counsel provided unreasonable assistance by failing to amend his *pro se* petition into proper legal form. Defendant does not challenge the third-stage denial of his jury waiver claim or the second-stage dismissals of his remaining claims on the merits. The State responds that postconviction counsel's Rule 651(c)

certificate was facially valid and also that counsel complied with Rule 651(c) in that she amended defendant's *pro se* petition into appropriate legal form.

¶ 25 Under the Act (725 ILCS 5/122-1 *et seq.* (West 2010)), petitioners are entitled to a "reasonable" level of assistance from counsel during postconviction proceedings. *People v. Johnson*, 2018 IL 122227, ¶ 16. To ensure this level of assistance, Rule 651(c) imposes three duties on postconviction counsel. *People v. Perkins*, 229 Ill. 2d 34, 42 (2007). Under the rule, either the record or a certificate filed by postconviction counsel must show that counsel (1) consulted with the petitioner to ascertain his contentions of constitutional deprivation; (2) examined the record of the trial proceedings; and (3) made any amendments to the *pro se* petition necessary to adequately present the petitioner's contentions. Ill. S. Ct. R. 651(c) (eff. July 1, 2017); *Perkins*, 229 Ill. 2d at 42. Substantial compliance with Rule 651(c) is sufficient. *People v. Landa*, 2020 IL App (1st) 170851, ¶ 45. Although a certificate need not mirror the language of the rule, it must substantially demonstrate that counsel performed the duties the rule requires. *Id.* ¶ 49.

¶ 26 "Under Rule 651(c), postconviction counsel has an obligation to present a defendant's postconviction claims in the appropriate legal form, and the failure to do so constitutes unreasonable assistance." *People v. Nitz*, 2011 IL App (2d) 100031, ¶ 18. If postconviction counsel fails to comply with Rule 651(c), remand is required regardless of whether the claims raised in the *pro se* or amended postconviction petition have merit. *People v. Addison*, 2023 IL 127119, ¶ 42. This requirement reflects the rationale underlying Rule 651(c): that a petitioner's limited right to counsel under the Act cannot be fully realized when postconviction counsel fails to adequately fulfill the duties imposed by the rule. *People v. Suarez*, 224 Ill. 2d 37, 51 (2007).

We review *de novo* whether counsel provided reasonable assistance in compliance with Rule 651(c). *Addison*, 2023 IL 127119, ¶ 17.

¶ 27 Defendant first argues that postconviction counsel filed a facially defective certificate. On this issue, *People v. Salinas*, 2026 IL App (2d) 240363, is instructive. In that case, the Rule 651(c) certificate stated that counsel had reviewed the *pro se* petition and the record, consulted with the defendant "to the extent necessary to adequately represent his contentions of error in the proceedings," and thereafter filed an amended petition. *Id.* ¶ 37. A majority of this court held that the certificate was facially deficient because it conflated Rule 651(c)'s consultation requirement with its distinct amendment requirement. *Id.* ¶ 38. As the majority explained, consulting with the defendant "to the extent necessary to adequately represent his contentions of error" did not necessarily mean that counsel's amended petition adequately presented those contentions. *Id.* The majority declined to read the missing amendment language into the certificate. *Id.* This court nevertheless recognized that the absence of a conforming certificate does not necessarily preclude a finding of compliance if the record makes a "clear, affirmative showing" that counsel complied with Rule 651(c). *Id.* ¶ 40. Because the State did not argue that the record otherwise showed compliance, the majority treated the defective certificate as dispositive and remanded for new second-stage proceedings. *Id.* ¶¶ 40-41, 55.

¶ 28 Justice Birkett, dissenting in part and concurring in part, disagreed with the majority's assessment of counsel's Rule 651(c) certificate. Justice Birkett noted that postconviction counsel had filed a second Rule 651(c) certificate that stated counsel had consulted with the defendant "to the extent necessary to adequately represent his contentions of error in the proceedings and deprivation of constitutional rights," and thereafter filed an amended successive postconviction petition. *Id.* ¶ 62. Justice Birkett would have held that this added language rendered the second

certificate substantially compliant, reasoning that one could "infer that [postconviction] counsel's certificate used the term 'necessary' to refer both to the duty to consult and to make 'necessary' amendments, although stated awkwardly." *Id.* Justice Birkett nevertheless agreed that remand was warranted because, in his view, the record rebutted the presumption of reasonable assistance. *Id.* ¶ 63.

¶ 29 The certificate in the present case stated that postconviction counsel had "consulted with [defendant] in person through legal calls and by mail to the extent necessary to adequately represent his contentions of error in the proceedings and deprivation of constitutional rights and thereafter filed an [a]mended [s]uccessive [p]ost-[c]onviction [p]etition." That language is materially similar to the second certificate in *Salinas*, which Justice Birkett would have held substantially compliant. There is accordingly room for a difference of opinion as to whether the added "deprivation of constitutional rights" language satisfies Rule 651(c) or, under the majority's reasoning, still conflates the consultation and amendment requirements. We need not resolve that question, however, because, as the State argues, the record independently makes a clear, affirmative showing that counsel complied with Rule 651(c). See *id.* ¶ 40 (a nonconforming certificate does not preclude a finding of compliance where the record makes that showing); see also *People v. Johnson*, 154 Ill. 2d 227, 238 (1993) ("the absence of counsel's affidavit will be excused where the record demonstrates that counsel adequately fulfilled his duties as post-conviction counsel").

¶ 30 In the present case, the record makes the clear, affirmative showing of compliance necessary to excuse any defect in the certificate. The relevant question is whether postconviction counsel discharged the rule's three duties: consulting with defendant, examining the trial record, and making any amendments necessary to adequately present defendant's contentions. Counsel

stated that she consulted with defendant and examined the record, and defendant concedes that those two requirements were satisfied. The amended petition's specific citations to the transcripts from the trial and the section 115-10 hearing further support the record's showing that counsel examined the proceedings.

¶ 31 With respect to the requirements of Rule 651(c), defendant argues only that postconviction counsel failed to make necessary amendments to adequately represent his *pro se* claims. We disagree. Counsel must shape the petitioner's claims into appropriate legal form, but need not ensure that they succeed on the merits. *People v. Wise*, 2024 IL App (2d) 191139, ¶ 18. The allegations must be specific factual assertions and not "patently insufficient" or "woefully incomplete." *Id.* ¶¶ 18-19. Here, counsel substantially reworked the *pro se* petition, organized its claims under the *Strickland* framework, and supported them with exhibits, including the criminal complaints against the minors' father, defendant's affidavits, Dr. Zwolski's medical record, and literature concerning children's suggestibility. Counsel also framed the forfeited record-based claims as claims of ineffective assistance of appellate counsel, and reiterated in her response to the State's motion to dismiss and at the hearing that those claims were not forfeited for that reason. The record thus shows that counsel performed Rule 651(c)'s required duties, regardless of whether the certificate was facially valid or the amended petition ultimately warranted relief.

¶ 32 Defendant's reliance on *People v. Turner*, 187 Ill. 2d 406 (1999), is unpersuasive. In that case, the defendant's *pro se* postconviction petition advanced to the second stage, and postconviction counsel was appointed. *Id.* at 409. Counsel did not file an amended postconviction petition or attach any supporting affidavits. The trial court granted the State's motion to dismiss without an evidentiary hearing, finding that the claims were forfeited because they could have been raised on direct appeal. *Id.* On appeal to our supreme court, the defendant argued that

postconviction counsel's failure to amend his *pro se* petition violated Rule 651(c). *Id.* at 412. The supreme court explained that, although counsel was not required to amend every *pro se* petition, Rule 651(c) required counsel to make amendments necessary for the adequate presentation of the petitioner's claims. *Id.* The defendant's postconviction counsel had failed to include a claim of ineffective assistance of appellate counsel, resulting in the trial court finding that the defendant's claim of trial error, which had not been raised on direct appeal, was forfeited. *Id.* at 413. The supreme court accordingly held that postconviction counsel provided unreasonable assistance by failing to make a routine amendment to the *pro se* petition that would have overcome the forfeiture finding. *Id.* at 414.

¶ 33 Here, unlike in *Turner*, postconviction counsel filed an amended petition that included a claim of ineffective assistance of appellate counsel and reiterated that claim both in the written response to the State's motion to dismiss and at the hearing on the motion. Defendant argues that, as in *Turner*, claims one through five were forfeited because postconviction counsel failed to make the amendments necessary to overcome a procedural bar. The trial court's order, however, does not support that assertion. The trial court considered whether the record-based claims could be excused from forfeiture under the fundamental-fairness exception and concluded that defendant "has not sufficiently alleged" that appellate counsel's failure to raise the claims on direct appeal "was an error that resulted in prejudice." Read in context, this statement reflects the trial court's determination that defendant could not establish prejudice because the underlying claims lacked merit, not a determination that postconviction counsel's pleadings were deficient. The trial court's reliance on *Mahaffey*, 194 Ill. 2d at 173, confirms this interpretation because our supreme court held in that case that defendant could not establish prejudice where the underlying claim lacked merit.

¶ 34 The trial court's treatment of claims six and seven further confirms that reading. The trial court disposed of claim six, alleging ineffective assistance for failing to call Dr. Zwolski, by finding that "[f]rom the facts plead, there is no reasonable probability that the result of the proceeding would have been different." The trial court disposed of claim seven, alleging ineffective assistance for failing to present expert testimony regarding child suggestibility, by concluding that defendant "cannot successfully allege that he suffered prejudice." Thus, the trial court used pleading-oriented phrases such as "not sufficiently alleged" and "cannot successfully allege" to express substantive conclusions about prejudice, rather than to identify defects that postconviction counsel could have cured by adding allegations to the petition. Accordingly, the trial court resolved the first seven claims by reaching and deciding the question of prejudice. Unlike in *Turner*, the trial court did not dismiss claims one through five based on pleading deficiencies attributable to postconviction counsel. Rather, it considered whether defendant had established a basis for excusing forfeiture under the fundamental-fairness exception and concluded that he had not established prejudice because the underlying claims lacked merit.

¶ 35 Defendant faults postconviction counsel for failing to provide further support for the claims in the amended petition. As his only example, defendant argues that, with respect to the first claim, "the petition does not identify any support or evidence for the claim that [the minors' father] falsely accused [defendant], explain how any of the 115-10 testimony on this issue would be admissible at trial, or argue that the introduction of the false accusation claim could have changed the result at trial." The record refutes this assertion. In the amended petition, counsel detailed the minors' mother's testimony at the section 115-10 hearing that she was unsure whether the allegations had been fabricated because the minors' father was jealous of defendant, the two men frequently fought, and, on one occasion, the father tried to run defendant over and chased him with a bat.

Counsel also attached a criminal complaint charging the minors' father with aggravated assault against defendant. In its motion to dismiss, the State argued that the mother's testimony would have been inadmissible at trial. In a written response, postconviction counsel argued that the testimony would have been admissible because it was based on the mother's personal knowledge and cited case law in support of that argument. At the hearing on the motion to dismiss, counsel further argued that the omitted evidence left a hole in defendant's theory of defense, would have alerted the jury to the possibility that the minors had made false statements, and "most definitely" would have affected the jury's finding of guilt beyond a reasonable doubt. Thus, the record refutes defendant's only example of postconviction counsel's alleged failure to provide further support for his claims. Defendant identifies no other facts, authority, or material that counsel could have added to the amended petition to further support the claims. A reviewing court cannot assume that additional allegations or arguments were available when neither the record nor the defendant identifies them. *People v. Williams*, 2025 IL 129718, ¶¶ 46-49. Postconviction counsel's inability to make a claim factually sufficient, or the fact that a claim ultimately fails, does not, by itself, establish unreasonable assistance under Rule 651(c). *Id.*

¶ 36 Finally, defendant argues that postconviction counsel failed to comply with Rule 651(c) by failing to attach an affidavit from Dr. Zwolski. The absence of an affidavit, standing alone, does not establish that postconviction counsel failed to provide reasonable assistance. Section 122-2 of the Act permits a petition to be supported by "affidavits, records, or other evidence" (725 ILCS 5/122-2 (West 2022)), and our supreme court has rejected a categorical rule requiring a witness's affidavit to support a claim of ineffective assistance based on counsel's failure to call that witness. (*People v. Dupree*, 2018 IL 122307, ¶ 34). Here, the record affirmatively demonstrates that postconviction counsel adequately presented this claim. Counsel attached Dr. Zwolski's medical

record, which documented the findings from his examination of K.D., including an intact hymen and no signs of trauma or bruising. Those were the precise findings defendant alleged in his *pro se* petition that Dr. Zwolski could have testified to at trial. Defendant did not allege that Dr. Zwolski could have offered any additional opinions or testimony beyond the findings documented in the medical record. Thus, the medical record provided evidentiary support for the entirety of defendant's contention. Counsel also explained the significance of those findings in her response to the State's motion to dismiss and at the hearing. Specifically, she noted that Dr. Zwolski examined K.D. in 2002, closer in time to the alleged offenses than Dr. Link's 2005 examination, and that Dr. Zwolski's testimony could have powerfully impeached Dr. Wolf's testimony that she did not observe an intact hymen. Accordingly, counsel did not leave the proposed claim unsupported. Rather, she supported defendant's precise contention with the medical record and explained the asserted value of Dr. Zwolski's proposed testimony. Because the medical record documented all the findings defendant alleged Dr. Zwolski could have testified to, a separate affidavit was not necessary to adequately present the claim. Its absence therefore does not establish that counsel failed to make a necessary amendment. *Id.*

¶ 37 III. CONCLUSION

¶ 38 We note that defendant does not argue, in the alternative, that the petition made a substantial showing of a constitutional violation. Rather, he argues only that postconviction counsel provided unreasonable assistance in violation of Rule 651(c), an argument we have rejected. Accordingly, we affirm the judgment of the circuit court of Kane County.

¶ 39 Affirmed.