

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.
	)	

REPLY BRIEF FOR PETITIONER-APPELLANT

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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.

The State concedes Melvin Hammond’s post-conviction attorney presented at least one claim deficiently by not attaching evidence to support the claim or explaining its absence. (St. Br. 37-38) It is well settled that counsel’s omission violated Illinois Supreme Court Rule 651(a) and requires a remand. *See People v. Turner*, 187 Ill. 2d 406, 414 (1999). Nonetheless, the State seeks to subvert this requirement and asks this Court to newly hold, *unrelated to the issue on which this Court granted leave to appeal*, that the inadequate presentation of a petitioner’s claims only violates Rule 651(c) when the record affirmatively shows an additional error by counsel. As explained in Part A(1) of this reply, the State’s request is undermined by this Court’s precedent and by statute, and it fails.

As for the issue on appeal, addressed in Part A(2) below, the State ignores the split in the appellate court on whether courts may presume a post-conviction attorney who does not attach supporting evidence, or explain why it is not attached, attempted to locate that evidence but failed. The State does not mention a single case rejecting that presumption or try to argue those cases are incorrect. *See People v. Jackson*, 2021 IL App (1st) 190263, ¶¶ 44-46; *People v. Thompson*, 2016 IL App (3d) 150644, ¶ 25; *People v. Carson*, 2024 IL App (1st) 221644, ¶¶ 20-25; *People v. Wise*, 2024 IL App (2d) 191139, ¶ 20. Nor does it address the conflict this presumption creates with the legislative mandate that an explanation be given for why supporting evidence is not attached.

A. Post-conviction counsel failed to adequately present Hammond’s claims by not attaching supporting evidence or explaining its absence.

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

a. The State concedes one claim advanced by counsel was deficient, and its arguments that this deficiency did not violate Rule 651(c) fail.

The State concedes post-conviction counsel deficiently presented one claim without supporting evidence: that trial counsel ineffectively failed to investigate the pathologist who performed Diamond Shaw's autopsy, Dr. Kim. (St. Br. 37-38) Yet the State asks this Court to find counsel satisfied Rule 651(c) notwithstanding his omission. Citing *People v. Perkins*, 229 Ill. 2d 34 (2007), the State first argues that Rule 651(c) only requires "essential" amendments. (St. Br. 21) *Perkins* actually held Rule 651(c) mandates "*any* amendments necessary for an adequate presentation of a petitioner's contentions." 229 Ill. 2d at 44 (emphasis added). This Court has also already settled that counsel's duty to either attach affidavits to support the post-conviction claims or to explain their absence is essential, as not doing so is "fatal" to a petitioner's claims. *Turner*, 187 Ill. 2d at 413; *People v. Johnson*, 154 Ill. 2d 227, 239-45 (1993).

The State substitutes itself for post-conviction counsel to offer an explanation for why evidence to support this claim was not attached. (St. Br. 38) But this was counsel's job, not the State's. 725 ILCS 5/122-2 (2012); *Turner*, 187 Ill. 2d at 413. Nor does the State's explanation excuse counsel's failure to attach evidence related to Dr. Kim. Per the State, Dr. Kim retired in 2015 and died in 2023. (St. Br. 38) Yet Hammond's 2007 *pro se* petition was remanded in 2012. (C. 51) Thus, the attorneys on remand had *three years* to reach out to Dr. Kim before his retirement and a full *decade* until his death. In fact, this case concluded in the circuit court in March of 2023 (R. 184-85), before Dr. Kim passed away in October. (St. Br. 38)

The State may be seeking to show that a remand would be futile in light of Dr. Kim's *current* unavailability. Yet Dr. Kim himself is not the only evidence that could support a claim that trial counsel was ineffective in failing to investigate the doctor. At the second stage, Dr. Kim's autopsy report could be attached to show the findings Hammond alleged should have

led trial counsel to investigate Dr. Kim, with an explanation why he is not available. Then, at an evidentiary hearing, counsel could subpoena Dr. Kim's files and/or call a substitute medical examiner to discuss their view of the cause and timing of Diamond's death, based on Dr. Kim's report, just like the State called a substitute medical examiner at trial. (SUP R. 1479-85 V2)

Nor is there a harmless error component to Rule 651(c). *People v. Addison*, 2023 IL 127119, ¶¶ 32-44; *People v. Suarez*, 224 Ill. 2d 37, 52 (2007). In *Johnson*, 154 Ill. 2d at 246, counsel similarly failed to provide evidence to support the claims in a petition. Without knowing that missing evidence, this Court recognized that although the judge may have dismissed the petition, even if counsel had contacted the witnesses named in the petition and attached supporting affidavits, the petitioner was entitled to have the judge "determine on the basis of a complete record whether the post-conviction claims require an evidentiary hearing." *Id.* Because the judge could not do that without supporting evidence, a remand was required. *Id.*

The State seeks to have its cake and eat it too by arguing that a Rule 651(c) violation should only be found if the petitioner can prove on appeal that "counsel could have cured the petition's alleged deficiencies." (St. Br. 31) According to the State, since this record does not contain that evidence, counsel cannot be found to have violated Rule 651(c). (St. Br. 31-32) This request places petitioners in an impossible Catch 22. If the record already contained the evidence necessary to support Hammond's claims, counsel would not need to add that evidence to the petition and therefore would not violate Rule 651(c) by failing to do so. Yet by advancing unsupported claims and failing to explain why that evidence was not attached, *counsel* left Hammond with nothing but speculation to show his claims could be supported, as Hammond cannot add evidence to the record on appeal. (Def. Br. 35) The "heads the State wins, tails the petitioner loses" approach to Rule 651(c) requested by the State here should be rejected.

The State uses an incomplete citation to *People v. Huff*, to assert that counsel does

not need to amend frivolous claims. (St. Br. 21-22) In *Huff*, this Court cited *People v. Greer*, 212 Ill. 2d 192, 211-12 (2004), to note that post-conviction counsel may withdraw if they determine a petition's claims are without merit. *Huff*, 2024 IL 128492, ¶ 27. *Huff* considered if counsel violated Rule 651(c) by resting on a frivolous *Apprendi* claim without amending the petition to state a non-frivolous claim or moving to withdraw. 2024 IL 128492, ¶¶ 13-14. There, the defendant on appeal did not identify any amendment necessary for counsel to make, as the petition's sole claim was already presented in compliance with the Act. Thus, the defendant on appeal acknowledged the petition was frivolous and argued counsel had to withdraw. *Id.* ¶¶ 24-25. This Court disagreed. It held that while counsel has an ethical duty not to advance frivolous claims, nothing showed counsel knew the petition was frivolous, and he stood on a petition "presented in the best possible legal form." *Id.* ¶¶ 28-30. *See also People v. Arrington*, 2026 IL App (1st) 240718-U, ¶ 49 (State "misconstrue[d] *Huff* by arguing that counsel's failure to amend a petition "calling out for routine amendments" did not violate Rule 651(c)).

Here, counsel said he "believe[d] the claims presented in the petitions state a substantial showing of deprivation of constitutional rights." (R. 185-86) Yet, those claims were not presented in the best possible form; they were not presented in compliance with the statute. *See* 725 ILCS 5/122-2. Thus, *Huff* does not apply. Instead, *Addison* and *People v. Urzua* apply. *See Addison*, 2023 IL 127119, ¶ 24 (counsel violates Rule 651(c) by advancing claims not in their proper form); *Urzua*, 2023 IL 127789, ¶ 59 ("By failing to withdraw and 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 actual-innocence claim.").

Nor has the State shown Hammond's claim was frivolous. The State incorrectly argues that nothing suggests Dr. Kim's testimony would have been more favorable to Hammond than that offered by Dr. Nancy Jones at trial. At trial, Dr. Jones testified Dr. Kim's autopsy report

noted that rigor mortis was present all over Diamond's body, but not whether it was moderate, mild, or marked. (SUP R. 1514-15 V2) Thus, while Dr. Jones could only offer a wide time frame on when Diamond's injuries were caused (SUP R. 1523-24), Dr. Kim may have narrowed that time frame. Particularly since Hammond had an alibi for part of the time preceding Diamond's death (Def. Br. 22), a reasonable trial attorney would have investigated whether Dr. Kim could better specify when Diamond died and/or when her injuries occurred. *See People v. Domagala*, 2013 IL 113688, ¶ 38 (trial counsel must investigate possible defenses).

Dr. Kim and Dr. Jones disagreed on another key point – the degree to which Diamond was dehydrated. At trial, Dr. Jones said Dr. Kim found Diamond markedly dehydrated, but Dr. Jones believed Diamond was only moderately dehydrated. (SUP R. 1510-11 V2) Dr. Jones further alluded to malnutrition being mentioned in Dr. Kim's report. (SUP R. 1510 V2) If Diamond was dehydrated and/or malnourished, either factor could have contributed to her death or aggravated her injuries, and thus, could have been relevant to whether and when the person inflicting those injuries knew they were substantially certain to cause death. *See* 720 ILCS 5/9-1 (1995). But counsel neither attached an affidavit from Dr. Kim, Dr. Kim's autopsy report, or other supporting evidence to show what Dr. Kim found.

Finally, the State argues that counsel's inadequate presentation of a petitioner's claims should not be enough to violate Rule 651(c), and that there must be something else in the record to demonstrate counsel's unreasonable assistance. (St. Br. 26-32) But a facially deficient petition *is* evidence in the record. *See Addison*, 2023 IL 127119, ¶ 21; *Urzua*, 2023 IL 127789, ¶ 64. Moreover, the State's attempt to garner case law to support its position fails.

First, the State contends this Court found a Rule 651(c) violation in *Addison* not because of the deficient petition, but because counsel removed essential portions of the *pro se* claims. (St. Br. 28-29) While counsel in *Addison* did eliminate necessary allegations, this Court did

not hold in *Addison*, and has never held, that post-conviction counsel only violates Rule 651(c) if they make a petition worse. *See Addison*, 2023 IL 127119, ¶ 25 (“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.”). Such holding would be absurd. There is no need for post-conviction counsel at all, if the only standard to which they are held is simply not to make a petition worse.

Nor is the State correct that *Urzua*, 2023 IL 127789, requires counsel to state something on the record indicating their confusion about the proceedings or unwillingness to comply with the Act. (St. Br. 29-30) True enough, in *Urzua*, counsel’s stated reason for failing to attach a notarized affidavit was incorrect. *See id.* ¶ 63. But it was the failure to amend the petition that mattered. This Court titled the section of the opinion explaining the Rule 651(c) violation, **“F. Retained Counsel’s Failure to Amend the *Pro Se* Petition or the Unnotarized Affidavit Rebutted the Rule 651(c) Certificate’s Presumption of Reasonable Assistance[.]”** *Id.* ¶ 58 (emphasis in original). And it explicitly held that “retained counsel’s failure to amend the petition, after failing to withdraw and adopting it, rebuts the presumption of reasonable assistance that attaches once retained counsel files a Rule 651(c) certificate of compliance.” *Id.* ¶ 65.

The State also misapplies *Turner*, 187 Ill. 2d 406. It first contends *Turner* does not reveal if post-conviction counsel filed a Rule 651(c) certificate and argues the duty to attach supporting evidence should be limited to when counsel does not file a certificate. (St. Br. 30) This argument already failed in *Addison*. There, the State said “there was no Rule 651(c) certificate filed in *Turner*” to argue counsel’s failure to overcome forfeiture did not matter because counsel’s Rule 651(c) certificate said they made the necessary amendments. 2023 IL 127119, ¶ 28. Finding this argument “makes little sense,” this Court explained, “It is difficult to imagine what would more clearly rebut the presumption created by the certificate than the record demonstrating

what this court has already defined to be a clear violation of Rule 651(c).” *Id.*

The State contends “*Turner* found unreasonable assistance based on additional evidence beyond the petition itself,” specifically, counsel’s demonstrated confusion about post-conviction proceedings. (St. Br. 30) Again, *Addison* undermines the State. There, this Court explained *Turner*’s “principal holding” was that “it would not be appropriate to affirm the dismissal of the petition when counsel had not shaped the claims into the proper form.” *Addison*, 2023 IL 127119, ¶ 41; *Turner*, 187 Ill. 2d at 412 (“Petitioner next argues that his counsel’s failure to make any amendments to the *pro se* post-conviction petition violated Rule 651(c). We agree.”).

The State argues *Turner* was unique because counsel there made more than one error. (St. Br. 40) Yet, Hammond also alleges multiple errors from counsel, and this Court rejected that argument in *Addison* as well. It held, “The failure to shape defendant’s claims into their proper form violates Rule 651(c), and the effect of this violation is the same regardless of whether counsel’s performance was also deficient in other ways.” 2023 IL 127119, ¶ 27.

The State ignores that the very purpose of Rule 651(c) “is to ensure that counsel shapes the petitioner’s claims into proper legal form and presents those claims to the court.” *Perkins*, 229 Ill. 2d at 43-44. Rule 651 was supplemented in 1969 to require counsel to make necessary amendments in response to a line of cases in which this Court emphasized that the Act “can not perform its function unless the attorney . . . shapes those complaints into appropriate legal form.” *People v. Slaughter*, 39 Ill.2d 278, 285 (1968), *aff’d in People v. Owens*, 139 Ill. 2d 351, 358-59 (1990); Ill. S. Ct. R. 651(c) Committee Comments (1984). When counsel has presented claims inadequately, holding for the first time that only those petitioners whose attorneys revealed on the record that they did not comply with the Act are entitled to relief would subvert the creators’ intent, encourage attorneys to hide non-compliance, and unfairly penalize petitioners whose attorneys simply did not announce their error on the record. *Addison* was clear that

“[t]he failure to shape defendant’s claims into their proper form violates Rule 651(c),” and did not impose any additional burden on the petitioner in showing *why* counsel did not do so. 2023 IL 127119, ¶ 27. Here, the State has conceded counsel presented at least one claim to the circuit court that was deficient. (St. Br. 37-38) This violated Rule 651(c) and requires a remand. *See Turner*, 187 Ill. 2d at 414.

b. Counsel left additional claims unsupported.

Post-conviction counsel also failed to support other claims he advanced. The State argues the record contained the evidence to substantiate these claims. (St. Br. 34-37, 46-48) But it contradicts itself because it also contends the record does *not* show if the missing evidence would have helped Hammond. (St. Br. 31-32) In the circuit court, the State also argued the claims should be dismissed as “there’s nothing attached from any additional expert” or anything “attached to the petition as to what anybody would testify differently than what was done at the trial,” and that “because there’s nothing attached, Judge, this Court cannot entertain speculation as to what another expert would say.” (R. 184) The State’s repeated recognitions that counsel left these claims *unsupported* undermines its new claim that the record supported them.

The State’s efforts further unravel when looking at its assertions here. The State first addresses Hammond’s claim that the defense should have used “their” expert (as argued in the *pro se* petitions (C. 540, 632)) or “a” defense expert (as argued in counsel’s amended petition (C. 791)) on the cause and timing of Diamond’s death. The State does not and cannot contend that counsel adequately supported the claim *he* raised in the amended petition, that the defense should have called “a” defense expert. Instead, it contends counsel did not need to support the claim *as he* chose to raise it, because it would require a fishing expedition. (St. Br. 35) This argument only highlights the unreasonable representation given to Hammond.

In Hammond’s *pro se* petition, he contended “trial counsel [] failed to call and use

their own medical expert witness opinion as to Cause of Death and when (time frame) injuries that caused death and other injuries inflicted.” (C. 540, 632, emphasis added) The defense did have “their own” expert regarding the cause of Diamond’s death. Before trial, counsel moved to qualify Kim L. Reilly as an expert in osteology and anthropology, stating she would testify lines on Diamond’s skull were “normal suture lines found on all infant skulls,” in contrast to what Dr. Kim had concluded. (C. 191; SUP R. 1127) But counsel did not call Reilly at trial. Thus, Hammond’s claim, absent counsel’s amendment, was not a fishing expedition.

Elsewhere, the State concedes counsel violates Rule 651(c) when they make a petition “*more* vulnerable to [a] procedural bar than [the] *pro se* petition” had done. (St. Br. 27) Here, counsel made the petition more vulnerable by broadening the scope of who should have been called at trial beyond the person cited in the record without attaching the statutorily required support for anyone new. Submitting a claim that even the State recognizes as “ambiguous” fell far short of presenting Hammond’s claims adequately. *See Wise*, 2024 IL App (2d) 191139, ¶ 19 (Rule 651(c) certificate rebutted where amended petition was conclusory and vague).

Focusing on how Hammond raised his claim before counsel made it worse, the State contends the record showed how Reilly would have testified. (St. Br. 34-35) To be sure, trial counsel said before trial that Reilly would testify the lines on Diamond’s skull were “normal suture lines found on all infant skulls,” and ultimately opted not to call Reilly based on trial counsel’s belief that the State would call a different expert who also believed Dr. Kim was mistaken about there being a skull fracture. (C. 191; SUP R. 1127, 1139-40) Yet, even if this record evidence *was* sufficient to support Hammond’s claim at the second stage, post-conviction counsel did not alert the circuit court to this evidence. In *People v. Kluppelberg*, 327 Ill. App. 3d 939-46 (1st Dist. 2002), some record evidence supported the defendant’s post-conviction claim, but the court found a Rule 651(c) violation because counsel did not attach any of it

to the post-conviction petition and only mentioned some of it at the motion to dismiss hearing. Here, worse than in *Kluppelberg*, counsel did not even *mention* the evidence in the record that tended to support Hammond's claim, even after the State said there was nothing to show anyone could have provided testimony different from that offered at trial. (R. 184)

The State also wrongly contends the record adequately supports Hammond's claim. At trial, the State called a substitute medical examiner, Dr. Jones, who testified the lines in Diamond's skull were suture lines that separated as her brain swelled from multiple injuries. (SUP R. 1501-03, 1508-13 V2) While the record supports Reilly's planned testimony *could* have rebutted this testimony, it does not show it *would* have done so. It shows Reilly planned to testify Dr. Kim misidentified "normal" suture lines as fractures, not if Reilly could rebut that those normal suture lines separated. (C. 191; SUP R. 1127)

Improperly injecting prejudice into the analysis, the State notes counsel said Reilly was not qualified to testify beyond if the mark on Diamond's skull was a suture line or a skull fracture. (St. Br. 36-37) Yet the State also focuses only on trial counsel's in-court statement that Reilly would not testify about Diamond's cause of death, ignoring trial counsel's written motion, which said Reilly's experience *did* include cause of death analysis. (C. 192) It is impossible to know what Reilly would have said without viewing the supporting evidence post-conviction counsel failed to attach. And even if Reilly could not offer an opinion on cause of death, it would still have been valuable for the jury to hear her apparent belief that the suture lines on Diamond's skull were *normal*, as that contrasted with Dr. Jones's testimony and could have impacted how the jury viewed Dr. Jones's opinion. (SUP R. 1501-03, 1508-13 V2) By leaving this claim unsupported, post-conviction counsel did not adequately present it.

Nor did counsel adequately present Hammond's claims that counsel was ineffective for failing to admit letters from his co-defendant, Michelle Tate, and Chief Crull's police report,

as counsel failed to attach either to Hammond’s petition. (Def. Br. 23-24) The State again circularly relies on the inadequate manner in which counsel presented the claims to contend they did not require supporting evidence. Per the State, since the petition does not show how the letters or the police report could be admitted at trial, trial counsel did not need to submit them. (St. Br. 46-47) Yet, it is undisputed that post-conviction counsel advanced these claims, failed to factually support them, and made no arguments to support their legal viability. Thus, counsel failed to adequately present those claims. *See Wise*, 2024 IL App (2d) 191139, ¶ 19.

In Hammond’s *pro se* petition, he alleged Tate’s letters would show he never spanked Diamond with a belt and did not do “that” to Diamond, supporting that someone else killed her. (C. 653)E As to Chief Crull’s police report, Hammond said Tate told Crull that Diamond had been in her car seat since midnight on the morning of her death, undermining the statement signed by Hammond with different facts. (C. 654) Thus, with Rule 651(c) compliance, these claims could be developed to show trial counsel overlooked potentially exonerating evidence—*i.e.*, Tate herself—and failed to show the police disregarded facts contradicting Hammond’s statement. Moreover, at trial, the State elicited *other* portions of Tate’s statement to Crull. (SUP R. 1427 V2) Thus, one way the more favorable portion of Tate’s statement to Crull could have been introduced was through the completeness doctrine. *See People v. Manning*, 182 Ill. 2d 193, 218 (1998) (where one party relates a conversation, the other side may bring out all the conversation). Since post-conviction counsel advanced these claims, it was his duty to explain how this evidence was admissible. *See Turner*, 187 Ill. 2d at 417 (it is “improper” to assess merits of defendant’s claims where counsel had not shaped them into appropriate legal form).

The State also circularly uses the incomplete record left by counsel on Hammond’s juror bias claim to contend Hammond cannot show that omission affected an important-enough claim to violate Rule 651(c). (St. Br. 47-48) Again, the merits of the claim do not yet matter.

Turner, 187 Ill. 2d at 417. Moreover, while the State contends Hammond has not shown how this claim could have been supported, Hammond described the evidence that could have been attached given counsel's decision to include this claim in the amended petition. (Def. Br. 26)

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.

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.

The issue actually posed in this case involves the split on whether courts may presume an attorney who advances a petition that lacks supporting evidence or an explanation for its absence must have unsuccessfully looked for that evidence. In Hammond's opening brief, he explained that the courts who have utilized this presumption have created an end-run around the rule that the filing of a Rule 651(c) certificate creates only a presumption of compliance that can be rebutted by the record. As explained in Part (A)(1), *supra*, this presumption is rebutted when counsel presents the petitioner's claims inadequately, as occurred here. The *additional* presumption (on which the appellate court is split) works backwards to undo that Rule 651(c) violation, which can no longer be rebutted. The State offers no response to this argument.

Nor does the State address how this presumption undermines the legislative mandate that a post-conviction petition contain an explanation for why supporting evidence is not attached. 725 ILCS 5/122-2. In fact, the State even laments how sometimes post-conviction attorneys may not be able to obtain factual support for a claim (St. Br. 21-22), the very reason why the statute overlooked by the State exists. The State argues a Rule 651(c) certificate should substitute for that explanation. (St. Br. 41-43) But this argument ignores this Court's precedent. As explained, in *Johnson*, 154 Ill. 2d at 239-45, and *Turner*, 187 Ill. 2d at 413, this Court held

post-conviction counsel must either attach evidence to support a petition *or* explain its absence.

The State errantly relies on *Perkins*, 229 Ill. 2d 34, and *People v. Williams*, 2025 IL 129718, to eliminate counsel’s duty to explain why required supporting evidence is not attached. (St. Br. 22-23, 26) Per the State, this Court found in *Perkins* that post-conviction counsel “presumptively” complied with Rule 651(c), even though the petition did not plead facts to meet the Act’s timeliness requirement. (St. Br. 22-23, 26) In fact, counsel in *Perkins* *did* plead these facts, arguing the petitioner’s claim could not have been raised earlier, which “excused his late filing.” *Perkins*, 229 Ill. 2d at 51. This Court held that while that argument may not have been compelling, it was “apparently the best option available based on the facts.” *Id.*

In *Williams*, the defendant pled guilty, later filing a post-conviction petition in which he alleged his trial attorney had allowed the trial judge’s son to attend privileged discussions between him and his attorney. *Id.* ¶ 27. Post-conviction counsel explained that this caused the defendant to plead guilty because he felt pressured and could no longer continue with trial counsel, and that he would have gone to trial but for the incident. *Id.* ¶ 33. The appellate court found counsel’s prejudice allegation insufficient, as he should have also asserted a viable defense. *Id.* ¶ 45. This Court disagreed, noting the defendant had admitted his likelihood of succeeding at trial was low and that *he could not think of any plausible defense.* *Id.* ¶ 48. This Court found that, “. . . where, as here, *the record shows* that under the circumstances the arguments postconviction counsel raised were the best options available, counsel cannot be said to have rendered an unreasonable level of assistance even if the arguments lacked legal merit, were not particularly compelling, and were ultimately successful.” *Id.* ¶ 49 (emphasis added).

Thus, in *Perkins* and *Williams*, counsels *did* try to overcome the procedural and legal bars at issue—they were simply unsuccessful. These affirmative acts cannot be squared with counsel’s *omissions* here. Indeed, because counsel did not attach “affidavits, records, or other

evidence” to the amended petition or “state why the same [was] not attached,” 725 ILCS 5/122-2, the record shows counsel made no effort to overcome the applicable legal bar here. Moreover, in *Williams*, the issue was what “the record show[ed],” not what could be presumed from counsel’s certificate. Here, the record shows counsel filed a deficient amended petition.

In *People v. Lightfoot*, 2023 IL 128398, this Court addressed a case more like Hammond’s. There, the State argued the petition was untimely; counsel said it was timely, but did not allege a lack of culpable negligence if it was untimely. *Id.* ¶¶ 29-31. On appeal, without resorting to any presumption that counsel must have attempted to find facts to show a lack of culpable negligence but been unable to do so, the Court stated: “this court must, at a minimum, remand this cause to the circuit court to allow for counsel to consult with petitioner and to amend the petition to allege facts establishing petitioner’s lack of culpable negligence.” *Id.* Just as this Court did not presume counsel’s failure to allege a lack of culpable negligence meant there was no argument to be made, there should be no presumption here that counsel’s failure to attach or explain the lack of supporting evidence meant no supporting evidence was available.

The State contends Hammond’s “proposed rule” requiring counsel to explain why supporting evidence is not attached would “needlessly pit counsel against client.” (St. Br. 41) Yet counsel’s duty to explain why supporting evidence is not attached is not a proposition; it is legislative mandate, 725 ILCS 5/122-2, which this Court has twice reiterated. *Johnson*, 154 Ill. 2d at 239-45; *Turner*, 187 Ill. 2d at 413. By proceeding on claims at the second stage, counsel is both representing and attempting to show those claims make a substantial showing of a constitutional violation. Without supporting evidence or an explanation for why the evidence is not attached, counsel dooms those claims to failure. *Johnson*, 154 Ill. 2d at 239-45. Thus, by explaining why evidence is not attached, counsel helps rather than harms the client.

Notably, the State admits there may be circumstances when evidence is available to

support a petitioner's claim, but counsel cannot find it at the second stage. (St. Br. 41-42) But when counsel simply files a Rule 651(c) certificate and does not explain why supporting evidence is not attached, counsel leaves the circuit court with no idea that there may yet be evidence available to support the petitioner's claim. All the court knows is that there is currently no evidence offered, which *requires* dismissal. *Johnson*, 154 Ill. 2d at 240.

The State presents a scenario where a petitioner alleges trial counsel should have called witnesses in support of an alibi that he was jogging at the time of an offense, but post-conviction counsel could not find anyone who remembered seeing the defendant jogging. Per the State, the unavailability of that evidence would not necessarily render that claim frivolous. But the State also believes that the lack of supporting evidence would require dismissal, and thus counsel should not be forced to provide the statutorily-required explanation for the lack of that evidence, claiming it would be "information unnecessary to its adjudication of the claim." (St. Br. 41-42)

But the State's example does not show a claim that had to be rejected or explain why counsel should be able to skirt a statutory requirement. While not attaching *any* evidence or explanation is fatal to this claim, that would not be true with supporting evidence or an explanation for why the evidence was not attached. Relevant evidence would be what was known to trial counsel at trial. Even if post-conviction counsel could not find a witness who saw the defendant jogging, counsel could obtain an affidavit from the defendant describing, *e.g.*, that he was jogging, who he saw, what he told trial counsel about this, and whether he had a habit of jogging at that time that others could verify. *See People v. Dupree*, 2018 IL 122307, ¶ 33 (whether a substantial showing has been made of ineffectiveness in failing to investigate does not depend on affidavits being attached but whether *any* evidence offered makes that showing). From that, the court could assess if trial counsel could have potentially located evidence to support the defendant's alibi at trial, closer in time to the jogging event. Thus, the State has illustrated

the importance of counsel's duty to attach supporting evidence or explain why it is not attached.

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.

The presumption used by the appellate court in this case allows attorneys to advance claims they know to be frivolous. (Def. Br. 30-33) The State misstates Hammond's argument, asserting he contends post-conviction counsel should have withdrawn. The State says counsel was not required to withdraw because nothing shows he knew the claims lacked merit. (St. Br. 51-53) Indeed, far from suggesting that, counsel confirmed his "belie[f]" that the claims in the petition made substantial showings of constitutional violations. (R. 185-86) Thus, Hammond has never contended counsel should have withdrawn. Instead, counsel should have adequately presented the claims he contended had merit. *See Addison*, 2023 IL 127119, ¶ 24.

The State argues that not uncovering evidence to support a petitioner's claims would not necessarily mean counsel knew the claims were frivolous. The State cites Hammond's allegation involving Dr. Kim to note that an affidavit from Dr. Kim could be unavailable, even though the claim itself still has potential merit. (St. Br. 53) Of course counsel will not always find evidence to support a petitioner's claims. The State simply overlooks that in that instance, counsel can fulfill his 651(c) duties and place the defendant's claim into the proper form by complying with section 122-2 and explaining why evidence like an affidavit from Dr. Kim is not attached. Again, this explanation is vital: with only the 651(c) certificate, but no evidence or explanation, counsel leaves the court no choice but to dismiss the claim.

The State also offers no response to a different scenario – if counsel contacted Dr. Kim and learned he could not provide favorable testimony on Hammond's behalf. (Def. Br. 32) In that instance, counsel would know Hammond's claim was frivolous. *See People v. Hodges*, 234 Ill. 2d 1, 16 (2009) (petition is frivolous when based on indisputably meritless legal theory

or factual fanciful allegation). But the presumption that counsel must not have been able to obtain supporting evidence does not distinguish between attorneys: (a) who did not comply with Rule 651(c) by not investigating the case at all, (b) who did investigate but simply could not yet find evidence to support the petitioner's claim (and failed under section 122-2 to explain the absence of the evidence), and (c) whose investigation uncovered the claim was frivolous.

Post-conviction attorneys on appeal must spare courts from wasting their judicial resources on claims counsel knows have no merit, while still helping clients by properly presenting claims that have potential merit. (Def. Br. 35-36) This Court's precedent seeks the same practice from trial post-conviction attorneys. *Greer*, 212 Ill. 2d at 205; *Huff*, 2024 IL 128492, ¶¶ 28-30. By ignoring how inadequately presented claims show on their face that counsel did not comply with Rule 651(c), and instead resorting to presumptions about why supporting evidence is not attached, courts undermine the law that attorneys cannot advance frivolous claims.

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.

Allowing a presumption to trump a facially deficient petition also allows a finding of Rule 651(c) compliance, even when attorneys did not comply. (Def. Br. 34-38) The State urges this Court to trust the candor of the attorneys who file Rule 651(c) certificates. (St. Br. 42-43) But an attorney who does not know they failed to properly amend a petition is not violating a duty of candor. They can earnestly believe they presented the claims properly, even when they did not. (Def. Br. 34-35) This is undoubtedly why Rule 651(c) creates a presumption of compliance that can be rebutted by the record. The most competent evidence that an attorney did *not* adequately present the claims is through the petition itself. *See Addison*, 2023 IL 127119, ¶ 28 (presumption created by certificate is rebutted when counsel violates the Rule).

The State's reliance on *People v. Custer*, 2019 IL 123339, where this Court held there

need not be a *Krankel* hearing to assess an unreasonable performance assertion, is inapposite. (St. Br. 43) A *Krankel* inquiry develops facts outside the record; the manner in which post-conviction counsel advanced a petitioner's claims is of record. Hammond is not asking any court to assess facts outside the record. His claim is based solely on counsel's of-record amended post-conviction petition, which failed to place the asserted claims in their proper legal form.

d. Rule 651(c) is violated when counsel does not adequately present a defendant's claims, even if counsel tried to do so, just like it 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 State does not dispute that Rule 651(c) requires actual compliance, not a mere attempt to comply. Yet for the State, "when counsel makes a good-faith effort to obtain supporting evidence, is unable to do so, and therefore does not attach such evidence, counsel *has* complied with Rule 651(c)." (St. Br. 43, emphasis in original) The State's argument is correct for *one* aspect of counsel's duties – to attempt to locate evidence to support a defendant's claims. *See Turner*, 187 Ill. 2d at 413. But counsel's broader duty under the Rule is to make the amendments necessary to adequately present the petitioner's claims, meaning to support them or explain the absence of that support. 725 ILCS 5/122-2. When counsel does not present the claims adequately, the duty to amend is not satisfied regardless of what else counsel may have done.

e. *Johnson* does not provide support for the presumption.

The parties agree that *Johnson*, 154 Ill. 2d at 241, contains language that courts may presume in an "ordinary case" that a post-conviction attorney attempted to locate supporting evidence, but was unable to do so.¹ Yet this Court has not yet defined the "ordinary case" where this presumption applies. This Court's precedent on Rule 651(c) shows such case must be one where the post-conviction attorney removed claims that required supporting evidence

¹ The State contends this language is not *dicta*. (St. Br. 39-40) But it cites no case law to support that argument, or address Hammond's cases for why it is *dicta*. (Def. Br. 40-41)

and only advanced properly-supported claims. (Def. Br. 41-42) *See Dixon*, 2018 IL App (3d) 150630, ¶ 22 (“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.”).

The State cites *Urzua*, 2023 IL 127789, to suggest the “ordinary case” is “any case” where Rule 651(c) certificate was filed. (St. Br. 27) But in *Urzua*, this Court only cited the general law that a Rule 651(c) certificate creates a presumption of compliance, and then held this presumption would have remained un rebutted in that case if counsel withdrew from the case and did not adopt the *pro se* petition. *Urzua*, 2023 IL 127789, ¶ 64. But advancing the petition without a required notarized affidavit “clearly rebutted retained counsel’s Rule 651(c) certificate’s presumption of reasonable assistance.” *Id.* Thus, *Urzua* supports Hammond.

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

Finally, the State contends Hammond’s *pro se* petitions alleged prejudice for his claims of ineffective assistance. (St. Br. 48-51) This argument is disingenuous given the State’s arguments in the circuit court 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) To argue now that Hammond did enough on his own, the State lists where Hammond uttered the word prejudice in his *pro se* petitions. (St. Br. 49-50) Yet almost all these incidences are conclusory allegations. (St. Br. 49-50) *See People v. Olinger*, 176 Ill. 2d 326, 363 (1997) (claim that unidentified fingerprints “could have belonged to a person * * * responsible for the murder” was “pure speculation” that “f[e]ll[] far short of” showing prejudice at second stage).

But even if *some* allegations adequately alleged prejudice, Hammond only need show *one* claim advanced by counsel was inadequately pled. *See People v. Kaszuba*, 2025 IL App (3d) 240748-U, ¶ 49. Counsel did not adequately allege prejudice for at least two claims: that appellate counsel should have argued the court erred in denying Hammond’s motions to suppress

evidence and to suppress statements. For those claims, Hammond did not allege what evidence could be suppressed or how that would have led to a different outcome at trial. (C. 548, 631) *See People v. Eubanks*, 2021 IL 126271, ¶ 30 (suppression claim must show motion would have been meritorious and a reasonable probability verdict would have been different without excludable evidence). Counsel also pled these claims deficiently in the amended petition.

The State argues the circuit court substantively ruled Hammond had not shown prejudice rather than finding no prejudice had been alleged. (St. Br. 50) The court labeled Hammond's ineffectiveness claims as a mere "laundry list of allegations" where "[n]o prejudice has been shown." (R. 187) In any event, a Rule 651(c) violation does not depend on whether counsel's error impacted the decision to dismiss the petition. *See Addison*, 2023 IL 127119, ¶¶ 40-41.

C. Conclusion

The State concedes post-conviction counsel did not adequately present all the claims he advanced. It has not shown counsel complied with Rule 651(c) despite this omission, or that the presumption used by the appellate court to forgive counsel's violation of the Rule was correct. For these reasons and those in the opening brief, this Court should reverse the dismissal of Hammond's post-conviction petition and remand for new second-stage proceedings.

Respectfully submitted,

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CERTIFICATE OF COMPLIANCE

I certify that this reply brief conforms to the requirements of Rules 341(a) and (b). The length of this reply brief, excluding pages or words contained in the Rule 341(d) cover, the Rule 341(h)(1) statement of points and authorities, the Rule 341(c) certificate of compliance, and the certificate of service, is 20 pages.

/s/Caroline E. Bourland
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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, Attorney General's Office, 115 S. LaSalle St., Chicago, IL 60603, eserve.criminalappeals@ilag.gov;

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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 July 27, 2026, the Reply Brief 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 Reply Brief to the Clerk of the above Court.

/s/Jacob J. Vicik

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