

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).

2026 IL App (4th) 251008-U

NO. 4-25-1008

IN THE APPELLATE COURT

OF ILLINOIS

FOURTH DISTRICT

FILED

September 11, 2026
Carla Bender
4th District Appellate
Court, IL

THE PEOPLE OF THE STATE OF ILLINOIS,	)	Appeal from the
Plaintiff-Appellee,	)	Circuit Court of
v.	)	Sangamon County
ROBERT W. BONER III,	)	No. 04CF351
Defendant-Appellant.	)	
	)	Honorable
	)	John M. Madonia,
	)	Judge Presiding.

JUSTICE DOHERTY delivered the judgment of the court
Justices Zenoff and Lannerd concurred in the judgment.

ORDER

¶ 1 *Held:* Postconviction counsel did not render reasonable assistance.

¶ 2 Defendant Robert W. Boner III entered into an open guilty plea to one count of first degree murder (720 ILCS 5/9-1(a)(1) (West 2004)) and was sentenced to 40 years' imprisonment. On direct appeal, the matter was remanded pursuant to a summary order, where the parties agreed that the circuit court failed to give the required postplea admonishments. The disposition allowed defendant to file new postjudgment motions on remand. Although the record on remand indicates defendant was readmonished, it is not clear that the court ever entertained his pending postplea motions before closing the case. Defendant subsequently filed a postconviction petition that was dismissed at the second stage.

¶ 3 On appeal, defendant argues that postconviction counsel rendered unreasonable

assistance by failing to examine the record and sufficiently amend the petition. For the reasons that follow, we reverse the dismissal of defendant's postconviction petition and remand for further proceedings.

¶ 4

I. BACKGROUND

¶ 5 In October 2005, defendant entered into an open guilty plea to one count of first degree murder for strangling his former paramour and was sentenced to 40 years' imprisonment. On direct appeal, the State conceded that the sentencing court improperly admonished defendant. *People v. Boner*, No. 4-06-0234 (2007) (unpublished summary order under Illinois Supreme Court Rule 23(c)). This court agreed and remanded the matter for the circuit court to properly admonish defendant pursuant to Illinois Supreme Court Rule 605(b) (eff. Oct. 1, 2001) and allow him to file postjudgment motions (see *People v. Jamison*, 181 Ill. 2d 24, 29-30 (1998)). *Id.*

¶ 6

There are no transcripts of proceedings relating to the purposes for which the case was remanded in 2007, but some information is reflected in the docket sheet. On April 27, 2007, defendant was admonished pursuant to Rule 605(b) and, approximately a month later, appointed counsel filed a motion to withdraw defendant's guilty plea and a motion to reconsider his sentence, all in conformity with our remand order. Those motions are included in the record, but the record reflects no other steps having been taken to have the motions heard or decided.

¶ 7

In substance, the motion to reconsider and reduce defendant's sentence argued that the sentencing court did not properly consider defendant's mental health conditions, his history of sexual abuse, and the psychiatric evidence presented at sentencing. The motion to withdraw defendant's guilty plea simply averred that he "pleaded guilty absent a knowing, intelligent and voluntary waiver of his rights." The matter was closed on August 17, 2007, with the motions pending and apparently unresolved.

¶ 8 In 2019, defendant sent correspondence to the circuit clerk, asking for a transcript of his sentencing hearing.

¶ 9 In April 2022, approximately 14½ years after his direct appeal and 3 years after his correspondence with the clerk, defendant filed a *pro se* postconviction petition alleging actual innocence via an involuntary intoxication defense pursuant to *People v. Hari*, 218 Ill. 2d 275 (2006), arguing that any time limitations for filing his petition should not apply due to his severe mental illness. After two changes in appointed postconviction counsel, defendant's petition was amended and ultimately asserted that appellate counsel was ineffective on direct appeal in failing to argue that defendant's sentence was excessive in light of the evidence in mitigation. Further, counsel argued that defendant was guilty of no culpable negligence in advancing the claim beyond the time limitations because he was "at all times since the resolution of his direct appeal, in custodial treatment in the custody of the State of Illinois," and even when "lucid," he had extremely limited access to legal resources. Counsel then noted that defendant had raised *Hari* as the basis of an involuntary intoxication defense. However, postconviction counsel did not believe the claim was viable, as plea counsel could not be found ineffective for failing to advance the *Hari* defense when that case did not yet exist and that the defense was not applicable where the record contained facts contrary to two of its three required elements.

¶ 10 The State moved to dismiss the petition, arguing that defendant failed to establish a lack of culpable negligence sufficient to excuse the 14½-year delay merely based on his ongoing mental health issues. The State also noted that defendant's 40-year sentence was within the permissible range of imprisonment (20 to 60 years), and any challenge on direct appeal to that sentence would have failed.

¶ 11 The matter proceeded to a hearing and argument. The circuit court found that

nothing in defendant's petition indicated that an unconstitutional sentence was imposed; instead, the court felt that defendant was simply taking issue with the manner in which the sentencing court weighed the mitigating factors. In the court's opinion, the sentencing claim would have undoubtedly failed, and appellate counsel could not be ineffective for failing to raise "hopeless issues on appeal." The court rejected defendant's argument that he was not culpably negligent in the delay of the petition's filing. The court also rejected defendant's claims that his mental health issues and lack of legal resources precluded him from filing the required pleading and that the 14-½-year delay demonstrated culpable negligence. The court stated that there was nothing "extraordinarily complex" about defendant's guilty plea proceedings and that his sentencing hearing was very thorough. Defendant's petition was dismissed.

¶ 12 This appeal followed.

¶ 13 II. ANALYSIS

¶ 14 On appeal, defendant argues that postconviction counsel rendered unreasonable assistance by (1) failing to review the record and ascertain (a) what was argued on direct appeal and (b) that the case was remanded for further postjudgment proceedings that never occurred; (2) failing to properly allege a lack of culpable negligence; and (3) not only failing to argue the *pro se* claim of actual innocence, but actually arguing against it.

¶ 15 A. Procedural Posture

¶ 16 The procedural path of this case has been far from standard, and we feel it is important to understand where the matter sits presently before addressing the merits of the appeal.

¶ 17 A preliminary question that presents itself is whether the original judgment of conviction remains in place following the initial appeal and remand. It is clear to us that the judgment is intact. The summary order issued in 2007 did not alter or undo defendant's conviction

via a vacatur or reversal but simply remanded the matter for proper postplea admonishments and possible postjudgment motion practice. (See *People v. Harris*, 2025 IL 130351, ¶ 47 (noting that a reversal and remand was not equivalent to vacating the defendant's conviction.); *People v. Bosley*, 233 Ill. App. 3d 132, 138 (1992) (noting that where the mandate only reversed the defendant's sentences and remanded for resentencing, the convictions were left intact); *People v. Custer*, 25 Ill. App. 3d 24, 26 (1975) (noting the mandate remanding the matter to the trial court only conferred limited jurisdiction on that court to effectuate the mandate). Consequently, we can conclude with confidence that defendant's conviction remains, at least at this juncture, undisturbed.

¶ 18 The next question is somewhat more elusive: even though the judgment of conviction remains, is it final, and if so, when did it become final? Our prior remand order required that defendant be properly admonished, a requirement that effectively rendered the judgment of conviction nonfinal until that step was completed. Admonishments were given on April 27, 2007, allowing the judgment of conviction to again become final. Less than 30 days later, however, defendant filed two timely motions directed against the judgment. The pendency of these motions would have, at least at the time, had the immediate effect of rendering the judgment of conviction nonfinal. See Ill. S. Ct. R. 606(b) (eff. Sept. 1, 2006) (providing that the pendency of a "timely posttrial or postsentencing motion directed against the judgment" shall render ineffective any previously filed notice of appeal).

¶ 19 Does this mean that defendant's conviction is *still* nonfinal because the motions directed against it have not been resolved some 14 years later? We believe not, as the motion is presumed to have been abandoned. See *People v. Brusaw*, 2023 IL 128474, ¶ 17 (noting the rule that, if no ruling has been obtained on a motion, the motion is presumed to have been abandoned

or waived). This principle is equally applicable to postjudgment motions:

“[W]hen no ruling has been made on a motion, the motion is presumed to have been abandoned absent circumstances indicating otherwise. [Citation.] There is no evidence in the record establishing that the trial court ruled on the motion to reconsider. Absent evidence to the contrary, we may presume that defendant abandoned his motion. The failure to obtain a ruling on a motion does not transform a final order into a nonfinal order. Because the motion was not adjudicated, the January 23, 1995, order entering defendant’s guilty plea and sentencing him was a final judgment and marked the beginning of the limitations period for filing a postconviction petition.” *People v. Van Hee*, 305 Ill. App. 3d 333, 335 (1999).

As for abandonment of the motions at issue here, it states the obvious to observe that there simply cannot be “circumstances indicating otherwise” when the motions have lain in the clerk’s file collecting dust for a decade and a half.

¶ 20 We reject the State’s invitation to conclude that defendant *decided* to abandon his motions, a factual conclusion to which our record simply does not speak. Additionally, the record does not suggest that postplea counsel made a decision to step away from the motions only some time after they were filed, as there was an immediate problem with their presentment. Under the rules applicable at the time, postplea counsel was required to set defendant’s motion to reduce sentence for hearing as soon as it was filed. See 730 ILCS 5/5-8-1(c) (West 2006) (requiring that a motion to reduce sentence be filed “together with a notice of motion” setting the date for the court to hear the pleading in order for it to be considered timely filed). Consequently, counsel’s presentation of the motion was flawed from the start, rather than reflecting a subsequent decision not to pursue the motion.

¶ 21 However, unlike waiver, which the State concedes is not apparent on the face of this record, we find no reason to conclude that abandonment requires us to probe defendant's subjective state of mind to explain his inaction. Just as the filing of the motions at issue was effectuated by the actions of counsel, so too it is counsel's subsequent inaction that leads to the inescapable conclusion that the motions have been abandoned, *i.e.*, that they were not pursued. If this inaction was in conflict with defendant's intentions at the time, he is not without a remedy: he may pursue postconviction relief based on allegations of ineffective assistance of postplea counsel in abandoning the motions.

¶ 22 Of course, postconviction relief is precisely what defendant sought in this case, and one issue with respect to the availability of that relief to him is whether he acted with sufficient promptness to seek it. We put that question aside for the moment and move to the central issue on appeal: whether defendant received adequate assistance from his postconviction counsel. For purposes of our remaining analysis, however, we view the judgment of conviction in this case as having become final on April 27, 2007, when defendant was admonished as directed by the remand order.

¶ 23 B. Assistance of Postconviction Counsel

¶ 24 Under the Post-Conviction Hearing Act (Act) (725 ILCS 5/122 *et seq.* (West 2022)), a criminal defendant can allege violations of a constitutional nature to collaterally attack a conviction. *People v. Domagala*, 2013 IL 113688, ¶ 32. The framework of the Act provides for three stages of review. *Id.* Relevant here, at the second stage, counsel is appointed, and the State may answer or file a motion to dismiss the petition. 725 ILCS 5/122-4, 122-5 (West 2022). While there is no constitutional guarantee to effective representation during the proceedings, the Act requires that counsel provide reasonable assistance. See *People v. Cotto*, 2016 IL 119006, ¶¶ 29-

30, 41.

¶ 25 To ensure reasonable assistance of counsel, appointed postconviction counsel must comply with the standards set forth in Illinois Supreme Court Rule 651(c) (eff. July 1, 2017). *People v. Huff*, 2024 IL 128492, ¶ 22. Pertinent here, the rule requires that counsel “has examined the record of the proceedings at the trial, and has made any amendments to the petitioner filed *pro se* that are necessary for an adequate presentation of petitioner’s contentions.” Ill. S. Ct. R. 651(c) (eff. July 1, 2017).

¶ 26 Counsel’s certification that he or she has complied with the duties set forth in Rule 651(c) creates a rebuttable presumption that counsel provided the petitioner with a reasonable level of assistance. *Huff*, 2024 IL 128492, ¶ 22. The defendant bears the burden of rebutting the “presumption by showing that postconviction counsel did not substantially comply with the strictures of the rule.” *People v. Addison*, 2023 IL 127119, ¶ 21. When a defendant establishes that these limited duties set forth by the rule are not carried out, our supreme court “ ‘has consistently held that remand is required *** regardless of whether the claims raised in the petition have merit.’ ” *Id.* ¶ 37 (quoting *People v. Suarez*, 224 Ill. 2d 37, 47 (2007)). We review *de novo* whether postconviction counsel provided reasonable assistance. *People v. Williams*, 2025 IL 129718, ¶ 41.

¶ 27 Initially, we find it difficult to accept the argument that postconviction counsel complied with the requirement under Rule 651(c) that he review the underlying record in light of the single argument presented below, *i.e.*, that appellate counsel was ineffective. Although postconviction counsel claims to have reviewed the record, he makes no mention of (1) postplea counsel’s failure to secure a ruling on the motions that were specifically permitted under the remand order; (2) the failure of counsel on remand to file a certificate pursuant to Illinois Supreme Court Rule 604(d) (eff. July 1, 2006), concerning the sufficiency of efforts to set aside the plea,

and (3) the fact that, because of the foregoing, defendant was denied the opportunity to challenge his guilty plea on direct appeal.

¶ 28 Instead, postconviction counsel argued that appellate counsel was somehow ineffective for not arguing that defendant's sentence was excessive on the prior—successful—appeal. A cursory review of the record demonstrates that this argument lacks merit, as appellate counsel successfully secured a remand to the circuit court for further postjudgment proceedings, including the opportunity to file motions to do exactly the things that postconviction counsel asserted as a basis of ineffectiveness. In other words, we do not know what appellate counsel might have argued on direct appeal following remand because the case completely fell off the radar in the circuit court.

¶ 29 Based on the single nonviable argument presented by postconviction counsel and the failure to mention any of the highly irregular facts of this case, we conclude that defendant has rebutted the facially valid Rule 651(c) certificate claiming that postconviction counsel reviewed the record.

¶ 30 The State argues against this conclusion, asserting that defendant never sought an appeal following the initial remand; the record contains no transcripts from the remand proceedings in 2007; and even if the circuit court did not conduct proceedings on remand, the fault for the absence of those proceedings should fall upon defendant for not pursuing a ruling. We address each of these arguments in turn.

¶ 31 At the outset, if the circuit court failed to follow our instructions on remand and simply closed the case without ever addressing defendant's pending motions, it would have effectively denied him the right to a subsequent direct appeal on the merits of the voluntary nature of his guilty plea and the propriety of his sentence. Although the State also lays the blame on

defendant for the lack of transcripts from any postjudgment proceedings that may have occurred on remand, transcripts of hearings are only created if the hearings themselves happen; the docket entries in this case give no indication that any such proceedings on defendant's motions ever took place. The case appears to have been closed after appointed counsel filed substantive motions.

¶ 32 Counsel's failure to pursue resolution on the pending motions—and to apparently stand idly by as the circuit court closed the case—not only frustrated our mandate, but it may have operated to rob defendant of his right to a direct appeal where his sentence could have actually been challenged. Despite the concerns made apparent on the face of the record, postconviction counsel never addressed the viability of a claim that defendant's postplea counsel was ineffective.

¶ 33 The State also relies on the fact that the circuit court found that the petition was time barred and argues that defendant cannot establish a lack of culpable negligence. However, if postconviction counsel did not fulfill the limited duties set forth by the rule, we do not explore “ ‘whether the claims raised in the petition have merit.’ ” *Addison*, 2023 IL 127119, ¶ 37 (quoting *Suarez*, 224 Ill. 2d at 47). Instead, supreme court precedent demands that “ ‘remand is required.’ ” *Id.* (quoting *Suarez*, 224 Ill. 2d at 47).

¶ 34 We have concluded that defendant's judgment of conviction became final after remand on April 27, 2007. The Act required him to seek postconviction relief within three years of that date. See 725 ILCS 5/122-1(c) (West 2006) (stating that absent a direct appeal, a postconviction petition must be filed within three years from the “date of conviction”). It is possible that defendant will be unable to establish a lack of culpable negligence for his delay in filing, which would result in some claims being time barred. Perhaps his *pro se* *Hari* claim of actual innocence is foreclosed. See *People v. Jones*, 2021 IL 126432, ¶ 23 (noting that a plea made knowingly in light of then-existing law may remain binding after a change in the law); but see

People v. Taliani, 2021 IL 125891, ¶¶ 63-66 (assuming without finding that a defense negating *mens rea* may provide the basis for a colorable actual innocence claim); *People v. Alberts*, 383 Ill. App. 3d 374, 382-85 (2008) (finding that *Hari* announced a new rule that applied retroactively). However, these are arguments that need to be developed after postconviction counsel has completed his duties under Rule 651(c). See *People v. Perkins*, 229 Ill. 2d 34, 43 (2007) (finding that Rule 651(c) requires amendments necessary for an adequate presentation of any facts that may establish a lack of culpable negligence for late filing). Appropriate circuit court action has already been bypassed once in this case, and we will not do so again. Until we review the matter as argued and decided below in the first instance, we express no view on the underlying merits.

¶ 35

C. Remedy

¶ 36

The final issue to decide in this appeal is the remedy to which defendant is entitled. In his briefing, he asks that we remand this case for him to file new postjudgment motions. That may put the cart before the horse, because it would skip past the postconviction stage and place defendant back in the postjudgment portion of the underlying case. Instead, having found the prior postjudgment motions abandoned, the alternative relief requested—remand for the appointment of new postconviction counsel and amendment of his petition—seems more appropriate given the posture of the case.

¶ 37

Accordingly, we remand the matter for the appointment of new postconviction counsel and further second-stage proceedings consistent with this order. This will almost certainly trigger a request for leave to file an amended postconviction petition; such leave should be “ ‘freely given.’ ” *People v. Currey*, 2024 IL App (2d) 230099, ¶ 14 (quoting *People v. Brown*, 336 Ill. App. 3d 711, 716 (2002)). For the benefit of the circuit court and the parties on remand, we have here clarified that defendant’s conviction remains standing and that it achieved finality on April 27,

2007. Beyond this, issues pertaining to the merits or timeliness of defendant's petition remain for the circuit court to decide in light of any amendments to defendant's petition.

¶ 38

III. CONCLUSION

¶ 39

For the reasons stated, we reverse the circuit court's judgment and remand with directions.

¶ 40

Reversed and remanded with directions.