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) 251113-U

NO. 4-25-1113

IN THE APPELLATE COURT

OF ILLINOIS

FOURTH DISTRICT

FILED
October 14, 2026
Carla Bender
4th District Appellate
Court, IL

THE PEOPLE OF THE STATE OF ILLINOIS,	)	Appeal from the
Plaintiff-Appellee,	)	Circuit Court of
v.	)	Peoria County
ANTHONY D. BARLOW,	)	No. 13CF426
Defendant-Appellant.	)	
	)	Honorable
	)	Paul E. Bauer,
	)	Judge Presiding.

JUSTICE VANCIL delivered the judgment of the court.
Justices Zenoff and Harris concurred in the judgment.

ORDER

¶ 1 *Held*: The appellate court affirmed the dismissal of defendant's successive petition for postconviction relief at the second stage and granted appellate counsel's motion to withdraw, finding no arguably meritorious claims could be raised on appeal.

¶ 2 In November 2013, a jury found defendant, Anthony D. Barlow, guilty of first degree murder (720 ILCS 5/9-1(a)(3) (West 2010)), a Class M felony, and armed robbery (720 ILCS 5/18-2(a)(2) (West 2010)), a Class X felony. The trial court sentenced defendant to 35 years in prison. In October 2023, defendant filed a motion for leave to file a successive petition for postconviction relief under section 122-1(f) of the Post-Conviction Hearing Act (Act) (725 ILCS 5/122-1(f) (West 2022)), alleging his trial attorney was ineffective for failing to assert his right to a speedy trial. He later amended his motion to further allege that the court did not provide certain jury instructions. Postconviction counsel was appointed but moved to withdraw, asserting defendant's arguments lacked merit. The trial court granted counsel's motion to

withdraw. The State then filed a motion to dismiss defendant's petition, which the court granted.

¶ 3 Defendant now appeals the dismissal of his petition. His appellate counsel, the Office of the State Appellate Defender (OSAD) has filed a motion to withdraw pursuant to *People v. Greer*, 212 Ill. 2d 192 (2004), claiming that defendant's appeal presents no viable grounds for relief.

¶ 4 We agree with OSAD. For the reasons that follow, we grant OSAD's motion to withdraw, and we affirm.

¶ 5 I. BACKGROUND

¶ 6 On May 21, 2013, the State indicted defendant on one count of armed robbery, alleging that, on or about November 4, 2011, defendant took United States currency from Yahya D. Mahmoud, a.k.a. John Mahmoud, by use of force or threat of force and while armed with a firearm. Defendant was arrested on June 20, 2013. At his arraignment on June 27, 2013, defendant pleaded not guilty, and he asked that the case be set for a jury trial. The trial court scheduled the trial for August 5, 2013. Defendant asked, "Does this mean my 120-day speedy trial has already started?" The court answered, "Correct." Later, the court rescheduled the trial to September 9, 2013.

¶ 7 On September 3, 2013, the State added count II to the indictment, alleging that, on or about November 4, 2011, defendant committed first degree murder by shooting and killing Mahmoud while committing armed robbery, a forcible felony.

¶ 8 At defendant's arraignment on the first degree murder charge on September 6, 2013, defense counsel asked the court to vacate the trial date scheduled for the following Monday and reschedule it for later in the year. The State interjected that it expected this continuance to be attributed to the defense for speedy trial purposes. The State indicated it was

ready to proceed the following week on the murder charge. Defense counsel responded she was not ready and rescheduling the trial to October still would not give her enough time. The State explained that it would agree to a date in December if defendant agreed, but if the continuance was attributed to the State, the State wanted a trial date in October. The trial court asked defendant directly what he wanted, and defendant insisted he wanted a trial date in October. The court scheduled the trial for October 15, 2013, but set an earlier hearing to review the matter.

¶ 9 At the hearing on September 16, 2013, defense counsel insisted she would not be prepared for trial in October. She moved to continue the trial until December 16, 2013. The State repeated that it did not object, if that is what defendant wanted, but it did not want the continuance attributed to the State. Defendant stated, "I'm still trying to get my 120 in; and at that time if I feel like we are not ready, then we can continue; but as of now, I don't want to—" The court interrupted defendant, explaining, "[W]e have set that trial date for the week of October 15th. And so any continuance beyond that date, even if the continuance was granted today, the State is docked up until October 15th." The State agreed. The court also stated that it was defendant's choice, not defense counsel's, whether to keep the October 15 date. The trial remained set for October 15, 2013.

¶ 10 At a hearing on October 4, 2013, the State asked for a continuance, explaining that it was not ready for trial. It asked for a trial date of November 12, 2013. Defense counsel objected. The court set defendant's trial for November 12.

¶ 11 Defendant's trial took place on November 12, 2013. During opening arguments, defense counsel argued that the State would not prove defendant was present when Mahmoud was shot. The State presented evidence that, early in the morning of November 4, 2011, Mahmoud was shot while sitting in his vehicle. He later died as a result of his injuries. A police

officer testified that Mahmoud had told him two men approached his vehicle, and one shot him in the chest and demanded his wallet. Helen Starks testified that on the evening of the shooting, she, defendant, Robert Buford, and Lakisha Foster drove to a gas station. Soon after, Foster got into Mahmoud's car because she was "fixin' to turn the trick," and she asked Starks to join her because she "didn't feel safe." Starks testified she got into Mahmoud's car, but Mahmoud was "leery," and she tried to get out of the car. She saw defendant right in front of her, and he told her to get on the ground. Starks then heard someone on the other side of the car tell Mahmoud, " 'Bitch, give me what you got,' " and she heard glass shattering and gunshots. Foster testified that she was in Mahmoud's car when defendant and Buford came to the vehicle, and she heard gunshots. Buford's and Foster's fingerprints were found on Mahmoud's vehicle. Defendant called two witnesses to testify that he had been shot in the knee in October 2021, and he walked on crutches or with a brace during November 2021. During closing arguments, defense counsel argued the State's witnesses were not credible and defendant was not present for the shooting.

¶ 12 The trial court's instructions to the jury included the following:

> "The defendant is charged with the offenses of armed robbery and first degree murder. The defendant has pleaded not guilty.
>
> * * *
>
> A person commits the offense of armed robbery when he, while carrying on or about his person or while otherwise armed with a dangerous weapon, knowingly takes property from the person or presence of another by the use of force or by threatening the imminent use of force.
>
> To sustain the charge of armed robbery, the State must prove the following propositions: And there are three. First proposition, that the defendant

or one for whose conduct he is legally responsible knowingly took property from the person or presence of John Mahmoud.

And second proposition, that the defendant or one for whose conduct he is legally responsible did so by the use of force or by threatening the imminent use of force.

And third proposition, that the defendant or one for whose conduct he is legally responsible carried on or about his person a dangerous weapon or was otherwise armed with a dangerous weapon at the time of the taking."

The jury found defendant guilty of both counts.

¶ 13 Defendant filed a *pro se* motion, claiming that Buford could have established defendant's innocence and his trial counsel was ineffective in failing to contact Buford. At a hearing on defendant's motion, defense counsel stated that she decided not to call Buford as a witness because she could not be sure what he would say during his testimony. The trial court appointed an attorney to represent defendant on his ineffective assistance claim.

¶ 14 At a hearing in February 2014, defendant testified he told his trial counsel to call Buford to testify at trial, but she declined to do so. He also testified that the day before an August court date, his attorney had told him she declined to present a plea offer from the State to him because she knew he would not accept it. Defendant admitted that counsel conveyed the plea offer to him before the trial commenced, and he rejected that offer. After considering proffers from defense counsel and the State, as well as recordings of Buford's interviews with police, the trial court denied defendant's claim of ineffective assistance of counsel and sentenced him to 35 years in prison.

¶ 15 Defendant appealed. He argued his attorney was ineffective in failing to call

Buford as a witness at trial and in failing to request a jury instruction on accomplice testimony. *People v. Barlow*, 2016 IL App (3d) 140334-U, ¶¶ 31, 38; see Illinois Pattern Jury Instructions, Criminal, No. 3.17 (4th ed. 2000) (hereinafter IPI Criminal 4th No. 3.17). We concluded defendant had not overcome the strong presumption that his trial attorney acted based on a reasonable trial strategy. *Barlow*, 2016 IL App (3d) 140334-U, ¶¶ 36, 41; see *People v. Albanese*, 104 Ill. 2d 504, 526 (1984). We also found defendant was not prejudiced by his attorney's failure to request IPI Criminal 4th No. 3.17. *Barlow*, 2016 IL App (3d) 140334-U, ¶ 42. We affirmed defendant's convictions. *Id.* ¶ 44.

¶ 16 In July 2017, defendant filed a *pro se* petition for postconviction relief. He claimed he received ineffective assistance of counsel because his trial attorney failed to investigate Buford as a witness, communicate a plea offer from the State before trial, object to the jury instructions on accountability, and request a jury instruction on causation in felony murder cases. See Illinois Pattern Jury Instructions, Criminal, No. 7.15A (4th ed. 2000) (hereinafter IPI Criminal 4th No. 7.15A). The trial court advanced the petition to the second stage of postconviction proceedings and appointed postconviction counsel, who filed a certificate under Illinois Supreme Court Rule 651(c) (eff. July 1, 2017), attesting that he had consulted with defendant, examined the record, and supplemented defendant's petition. He also filed a supplemental petition for postconviction relief that incorporated the claims in defendant's *pro se* petition. In August 2019, the State moved to dismiss the petition. A second postconviction counsel replaced defendant's first postconviction counsel and filed a supplemental postconviction petition, also incorporating defendant's claims. In June 2021, the trial court granted the State's motion and dismissed the petition.

¶ 17 Defendant appealed the dismissal. He argued he made a substantial showing that

his trial counsel was ineffective in failing to inform him of the State's plea offer. *People v. Barlow*, 2023 IL App (3d) 210380-U, ¶ 17. We found that the record refuted his claim because, at the hearing on defendant's motion for a new trial, defendant testified that he rejected the State's plea offer before it expired. *Id.* ¶ 18. Defendant also argued his second postconviction counsel failed to file the necessary certificate under Rule 651(c). We rejected this claim, finding defendant's first postconviction counsel's Rule 651(c) certificate was sufficient. *Id.* ¶ 24 (citing *People v. Smith*, 2022 IL 126940, ¶¶ 15, 19, 29). We affirmed the dismissal of defendant's petition. *Id.* ¶ 26.

¶ 18 On October 10, 2023, defendant filed a *pro se* motion for leave to file a successive postconviction petition. He claimed his trial counsel was constitutionally ineffective because she failed to move to dismiss the first degree murder charge based on a violation of defendant's right to a speedy trial. He also asserted that his prior appellate counsel was ineffective and postconviction counsel was unreasonable in failing to raise this claim.

¶ 19 No action was taken on defendant's petition for over one year. On October 15, 2024, defendant moved to amend his petition. He asserted,

> "Defendant argues that the trial courts erred by failing to instruct the jury on the lesser included offense of armed roobery. This arguement again affects the Felony Murder count. Specifically, he argues that the jury should have been instructed with (1)[ ]IPI CRIMINAL NO. 2.01 [(Illinois Pattern Jury Instructions, Criminal, No. 2.01 (4th ed. 200) (hereinafter IPI Criminal 4th No. 2.01))], which states that the defendant is charged with particular offens and has pled noit guilty, and (2) Illinois pattern jury instructions, Criminal, No. 2.01B (approved Dec. 2011), which states that the defendant has been charged with First Degree Murder

as well as another offense [*sic*]."

Citing *People v. Avdic*, 2023 IL App (1st) 210848, he further claimed that if these instructions had been given, his trial counsel could have argued that the jury could find him guilty of armed robbery but not felony murder, "because [of] lack of proximate cause."

¶ 20 At a court appearance on January 10, 2025, the trial court stated that it looked over defendant's pleadings, and it asked defendant if he was requesting that an attorney be appointed. Defendant answered that he was, and the State did not object. The court appointed postconviction counsel.

¶ 21 On March 11, 2025, postconviction counsel moved to withdraw, stating, "Counsel has reviewed the record of the proceedings in the trial court and [defendant's] claims of error. However, counsel is ethically prohibited from advancing [defendant's] claims." Counsel observed that defendant's "Petition was not formally reviewed for cause and prejudice before being advanced to the second stage." Counsel then explained that defendant's speedy trial argument lacked merit, as did his jury instruction claim, adding, "Any remaining related arguments would pertain strictly to trial strategy, which [defendant] has thoroughly challenged both on direct appeal and in his initial post-conviction petition."

¶ 22 At a court appearance on May 2, 2025, postconviction counsel represented to the trial court that he had mailed a copy of his motion to withdraw to defendant, and defendant wrote him a letter in response. Defendant asked counsel, "From the letter I sent you, did you see the error I was saying that you made?" Counsel responded that he stood on his motion. The court set the motion to withdraw for a hearing. Defendant asked to speak with counsel on the phone, and counsel indicated he would try to call him.

¶ 23 At a hearing on June 6, 2025, the trial court asked defendant if he had received

counsel's motion to withdraw, and defendant admitted that he had. Defendant opposed his attorney's motion to withdraw, but the court granted the motion and allowed defendant to proceed *pro se*. Defendant then told the court that he wished to proceed with only his "first issue," and he did not wish to address the "second issue" in his amended petition. The court responded that defendant would have that opportunity.

¶ 24 The State moved to dismiss defendant's petition. The trial court heard the State's motion on September 5, 2025. Defendant argued that his right to a speedy trial was violated. The court asked defendant about his other argument, and defendant responded that he "didn't even want to argue it anymore." After taking the motion under advisement, the court granted the State's motion and dismissed defendant's petition.

¶ 25 This appeal followed.

¶ 26 II. ANALYSIS

¶ 27 OSAD, defendant's appointed counsel on appeal, filed a motion for leave to withdraw and a supporting memorandum. OSAD asserts that defendant's claims are without arguable merit. The attached proof of service stated that a copy of counsel's motion was mailed to defendant. Defendant filed no response.

¶ 28 OSAD's motion discusses two issues defendant raised in his amended successive petition for postconviction relief under the Act: defendant's right to a speedy trial and the jury instructions on armed robbery. We agree that these issues present no arguably meritorious claims. However, OSAD fails to discuss defendant's reliance on *Avdic*. Nevertheless, we find *Avdic* does not provide a basis for relief. Besides the arguments defendant raised in his filings, OSAD also discusses whether postconviction counsel sufficiently complied with Rule 651(c), whether defendant received notice of counsel's motion to withdraw, and whether counsel's

motion to withdraw was adequate. OSAD concludes none of these issues provide grounds for relief. Once again, we agree.

¶ 29 The Act allows criminal defendants to petition the trial court for relief based on a substantial denial of constitutional rights in the proceedings resulting in their convictions. 725 ILCS 5/122-1(a)(1) (West 2024). Section 122-3 of the Act states, "Any claim of substantial denial of constitutional rights not raised in the original or an amended petition is waived." *Id.* § 122-3. Although a defendant may file one such petition without leave of court, he or she must obtain leave to file successive petitions. *Id.* § 122-1(f). The court may grant leave to file a successive petition "only if a petitioner demonstrates cause for his or her failure to bring the claim in his or her initial post-conviction proceedings and prejudice results from that failure." *Id.*

¶ 30 If the defendant makes a *prima facie* showing of cause and prejudice, the trial court grants leave to file the petition and begins the three-stage postconviction petition process. *People v. Ryburn*, 2019 IL App (4th) 170779, ¶ 20; *People v. Bailey*, 2017 IL 121450, ¶ 26. First, the court reviews the petition to determine if it is frivolous or patently without merit. *Ryburn*, 2019 IL App (4th) 170779, ¶ 21. If it is not, the court moves the petition to the second stage and, if necessary, appoints counsel for the defendant. *Id.*; see 725 ILCS 5/122-4 (West 2024). The State may move to dismiss the petition or file an answer. *Ryburn*, 2019 IL App (4th) 170779, ¶ 21. If the court does not dismiss the petition, it moves the petition to the third stage and conducts an evidentiary hearing. *Id.*

¶ 31 Here, the trial court granted the State's motion to dismiss during the second stage of proceedings. During this stage, "the defendant bears the burden of making a substantial showing of a constitutional violation" and "all well-pleaded facts that are not positively rebutted by the trial record are to be taken as true." *People v. Pendleton*, 223 Ill. 2d 458, 473 (2006).

"Thus, the dismissal of a postconviction petition at the second stage is warranted only when the allegations in the petition, liberally construed in light of the trial record, fail to make a substantial showing of a constitutional violation." *Ryburn*, 2019 IL App (4th) 170779, ¶ 22. We review the trial court's decision at this stage *de novo*. *Id.*; *Pendleton*, 223 Ill. 2d at 473.

¶ 32 A. Speedy Trial

¶ 33 We begin with defendant's claim that his trial attorney and his counsel for his direct appeal provided ineffective assistance in failing to assert that defendant was denied his right to a speedy trial. To show that his trial counsel was ineffective, defendant "must show that counsel's performance was objectively unreasonable under prevailing professional norms and that there is a 'reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different.' " *People v. Domagala*, 2013 IL 113688, ¶ 36 (quoting *Strickland v. Washington*, 466 U.S. 668, 694 (1984)). The same standard applies to defendant's claim of ineffective assistance of appellate counsel. *People v. Edwards*, 195 Ill. 2d 142, 163 (2001). "[U]nless the underlying issue is meritorious, a defendant cannot be said to have incurred any prejudice from counsel's failure to raise the particular issue on appeal." *Id.* Defendant also claims his first postconviction counsel failed to provide reasonable assistance by neglecting to amend his first petition to include this claim. See Ill. S. Ct. Rule 651(c) (eff. July 1, 2017); see also *People v. Perkins*, 229 Ill. 2d 34, 42 (2007). Rule 651(c) does not require postconviction counsel to advance claims that lack merit. *People v. Profit*, 2012 IL App (1st) 101307, ¶ 23 (citing *Greer*, 212 Ill. 2d at 205).

¶ 34 Section 103-5(a) of the Code of Criminal Procedure of 1963 allows any criminal defendant held in custody in Illinois to insist on a trial within 120 days of being taken into custody. 725 ILCS 5/103-5(a) (West 2024). This period of 120 days excludes delays occasioned

by the defendant. *Id.* "Delay shall be considered to be agreed to by the defendant unless he or she objects to the delay by making a written demand for trial or an oral demand for trial on the record." *Id.* "The trial court's determination as to who is responsible for the delay of trial is entitled to much deference, and should be sustained in the absence of a clear showing of the trial court's abuse of discretion." *People v. Bowman*, 138 Ill. 2d 131, 137 (1990). "However, the ultimate question as to whether [the] defendant's statutory right to a speedy trial has been violated is a question of law subject to *de novo* review." *People v. Pettis*, 2017 IL App (4th) 151006, ¶ 17.

¶ 35 Defendant claimed that he was denied his right to a speedy trial, and his trial counsel should have moved to dismiss the charges. Defendant was first arrested for armed robbery on June 20, 2013. His trial took place on November 12, 2013, and he remained in custody during this time. This period exceeded 120 days.

¶ 36 OSAD correctly rejects defendant's claim because part of the delay of defendant's trial was attributable to the defense. On September 6, 2013, defendant's trial counsel asked for a continuance. The State agreed to the continuance, although it insisted that the delay should not be counted against it when calculating defendant's 120-day deadline. "An agreed continuance generally constitutes an act of delay attributable to the defendant." *People v. Woodrum*, 223 Ill. 2d 286, 299 (2006). Therefore, this continuance to October 15, 2013, is attributable to the defense. Excluding the time between September 6, 2013, and October 15, 2013, only 106 days passed between defendant's arrest and his trial. This is below the 120-day limit. Defendant's speedy trial claim lacks merit, and his previous attorneys acted competently in declining to assert it.

¶ 37 B. Jury Instructions

¶ 38 Defendant also claims the trial court should have provided additional jury instructions. Defendant was convicted of first degree murder under subsection (a)(3) of section 9-1 of the Criminal Code of 1961 (720 ILCS 5/9-1(a)(3) (West 2010)), which states that a person commits first degree murder when he or she "commits or attempts to commit a forcible felony other than second degree murder, and in the course of or in furtherance of such crime or flight therefrom, he or she or another participant causes the death of a person." In Illinois, "the predicate felony underlying a charge of felony murder is a lesser-included offense of felony murder." *People v. Smith*, 233 Ill. 2d 1, 17 (2009). "[A] defendant is entitled to have the jury instructed on a less serious offense if that offense is included in the charged offense." *People v. Echols*, 382 Ill. App. 3d 309, 313 (2008). Generally, we review the trial court's decisions on jury instructions for an abuse of discretion. *People v. Pierce*, 226 Ill. 2d 470, 475 (2007).

¶ 39 Defendant claims the trial court should have provided certain jury instructions. He asserts the court should have instructed the jury on armed robbery. He also claims the court should have provided IPI Criminal 4th No. 2.01 and Illinois Pattern Jury Instructions, Criminal, No. 2.01B (4th ed. 2000) (hereinafter IPI Criminal 4th No. 2.01B). IPI Criminal 4th No. 2.01 states, "The defendant[s] [(is) (are)] charged with the offense[s] of ____. The defendant[s] [(has) (have)] pleaded not guilty." IPI Criminal 4th No. 2.01B states,

> "The defendant[s] [(is) (are)] charged with the offense of first degree murder. The defendant[s] [(has) (have)] pleaded not guilty. Under the law, a person charged with first degree murder may be found (1) not guilty of first degree murder; or (2) guilty of first degree murder; or (3) guilty of second degree murder. The defendant[s] [(is) (are)] also charged with the offense of ____. The defendant[s] [(has) (have)] pleaded not guilty to that charge."

¶ 40 Defendant's argument fails for three reasons. First, OSAD's motion to withdraw correctly observes that defendant could have raised this jury instruction argument in his initial appeal. Because he did not, defendant has waived this argument. *People v. Coleman*, 206 Ill. 2d 261, 277 (2002) ("[I]ssues that could have been presented on direct appeal, but were not, are considered waived.").

¶ 41 Second, defendant does not assert any constitutional violation. The purpose of a petition for postconviction relief "is to allow inquiry into *constitutional* issues relating to the conviction or sentence that were not, and could not have been, determined on direct appeal." (Emphasis added). *Id.*; see 725 ILCS 5/122-1(a)(1) (West 2022) (stating that a defendant may file a petition asserting that "in the proceedings which resulted in his or her conviction there was a substantial denial of his or her rights under the Constitution of the United States or of the State of Illinois or both"); see also *People v. Lawrence*, 211 Ill. App. 3d 135, 138 (1991) ("[P]ost-conviction petitions are to raise only constitutional claims, not violations of statutes or rules of procedure, which should be made on direct appeal."). Defendant does not connect his jury instructions argument to any constitutional right. Accordingly, the Act does not provide a mechanism for him to bring this claim.

¶ 42 Finally, defendant's claim that the trial court failed to provide certain instructions is simply wrong. Indeed, the court provided instructions on the definition and elements of armed robbery. The court also provided IPI Criminal 4th No. 2.01. The record clearly refutes defendant's claim that the trial court erred by omitting these instructions.

¶ 43 Although the trial court did not provide IPI Criminal 4th No. 2.01B, this omission does not require a new trial. In providing IPI Criminal 4th No. 2.01, the court instructed the jury that defendant was charged with first degree murder and armed robbery and that he pleaded not

guilty. IPI Criminal 4th No. 2.01B would have added only that a defendant charged with first degree murder can be found guilty of second degree murder. "A person commits the offense of second degree murder when he or she commits the offense of first degree murder as defined in paragraph (1) or (2) of subsection (a) of Section 9-1 of this Code [(720 ILCS 5/9-1(a)(1), (2) (West 2010))]," but he either acted from a sudden and intense passion arising from adequate provocation, or he had an unreasonable belief that the circumstances justified or exonerated the killing. 720 ILCS 5/9-2 (West 2010).

¶ 44 Defendant presented no evidence to support a claim that he was provoked or acted based on any mistaken belief. Instead, his core defense at trial was that the State had not proven he was present for the shooting. More importantly, defendant was convicted of first degree murder under paragraph (3) of subsection (a) of Section 9-1 of the Criminal Code of 1961, based on his participation in the underlying felony of armed robbery. See *id.* § 9-1(a)(3). Notably, the second degree murder statute does not apply to convictions for felony murder under this provision. See *id.* § 9-2; see also *People v. Morgan*, 197 Ill. 2d 404, 451-52 (2001). We find no basis to conclude that the trial court was obligated to provide IPI Criminal 4th No. 2.01B.

¶ 45 C. *Avdic*

¶ 46 Although OSAD did not address this citation explicitly on appeal, defendant's motion to amend his petition cited *Avdic* to argue that "the proximate cause theory underlying felony murder is different from the accounability or agrency btheory underlying guiolt for armed robbery [*sic*]."

¶ 47 In *Avdic*, 2023 IL App (1st) 210848, ¶ 1, the defendant was charged with felony murder predicated on a charge of armed robbery and attempted murder based on his accountability for his accomplice's actions. The defendant had planned to steal marijuana from a

woman, but during the attempt, his accomplice shot and killed a man in the woman's car. *Id.* ¶ 1. At trial, the defendant testified that he intended only to take the marijuana and flee and that he did not know his accomplice was carrying a gun. *Id.* The defendant was convicted on both counts. *Id.*

¶ 48 On appeal, the defendant argued the trial court should have instructed the jury on proximate cause and felony murder, as well as on the lesser included offense of armed robbery. The appellate court agreed, reasoning that the defendant could be convicted for felony murder only when the resulting death was a " 'direct and foreseeable consequence' " of the defendant's actions. *Id.* ¶ 39 (quoting *People v. Lowery*, 178 Ill. 2d 462, 467 (1997)); see IPI Criminal 4th No. 7.15A. The defendant's attorney specifically requested an instruction on the foreseeability requirement for felony murder. *Avdic*, 2023 IL App (1st) 210848, ¶ 42. Moreover, the defendant supported this defense by introducing evidence that he intended to commit only "a simple 'snatch and grab,' akin to shoplifting," rather than armed robbery. *Id.* ¶ 51. The court concluded, "Although a death may be a foreseeable consequence of a chain of events set in motion by a planned armed robbery [citation], whether the same could be said of an intended shoplifting or similar offense is a question of fact for the jury." *Id.*

¶ 49 The defendant further argued the trial court should have provided IPI Criminal 4th No. 2.01 and Illinois Pattern Jury Instructions, Criminal, No. 2.01R (4th ed. 2000) (hereinafter IPI Criminal 4th No. 2.01R). *Avdic*, 2023 IL App (1st) 210848, ¶ 32. IPI Criminal 4th No. 2.01R states,

> "[1] The defendant[s] [(is) (are)] [also] charged with the offense of [greater offense]. The defendant[s] [(has) (have)] pleaded not guilty. Under the law, a person charged with [greater offense] may be found (1) not guilty of

[greater offense] and not guilty of [lesser offense]; or (2) guilty of [greater offense]; or (3) guilty of [lesser offense].

[2] The defendant[s] [(is) (are)] also charged with the offense of ____. The defendant[s] [(has) (have)] pleaded not guilty."

Notably, however, the appellate court's order later referred to IPI Criminal 2.01B, rather than 2.01R, without explaining this discrepancy. See *Avdic*, 2023 IL App (1st) 210848, ¶¶ 58-59. The defendant argued that the trial court should have provided these instructions so that he could argue to the jury that he committed only theft, not armed robbery. Without the armed robbery conviction as the predicate felony, the defendant could not be convicted of felony murder. *Id.* ¶ 63.

¶ 50 The appellate court explained that the jury could have reached multiple conclusions resulting in acquittal. If the jury found the defendant not guilty of the lesser included offense of armed robbery, because he committed only theft, it should have acquitted the defendant of felony murder. *Id.* ¶ 64. If the jury found the defendant committed armed robbery but the murder was not a foreseeable outcome of his actions, the jury also should have acquitted the defendant of murder. *Id.* The court stated, "The key to understanding how the jurors could find [the] defendant accountable for robbery while acquitting him for felony murder is understanding that the proximate cause theory underlying felony murder is different from the accountability or agency theory underlying guilt for the robbery." *Id.* ¶ 65. The court determined that the accountability instructions were not sufficient because they did not contain the same foreseeability requirement as proximate cause for felony murder. *Id.* The court concluded that the trial court erred by omitting the requested instructions, and it reversed the defendant's convictions. *Id.* ¶ 67.

¶ 51 Defendant here sought to compare his case to *Avdic*. Both cases involved felony murder convictions with armed robberies as the predicate felonies. Moreover, defendant's successive petition referred to specific language in *Avdic*, although in a garbled manner. Even defendant's citation to IPI Criminal 4th No. 2.01B, which has no relevance to this case whatsoever, appears to be drawn from *Avdic*'s inadvertent reference to IPI Criminal 4th No. 2.01B instead of IPI Criminal 4th No. 2.01R. Defendant seemingly intended to argue that *Avdic*'s reasoning applies in this case.

¶ 52 OSAD fails to explain or acknowledge this case, perhaps treating this issue simply as part of defendant's jury instruction claim discussed above. Indeed, before the trial court, defendant himself referred to only two issues before the court. At the hearing on his petition, he argued only his speedy trial claim, and he did not want to argue his other claim. Defendant also may have considered his reliance on *Avdic* as simply part of his other jury instruction claim. However, defendant's motion to amend is unclear, as he cites *Avdic* for its reasoning based on proximate cause in felony murder cases. The pattern jury instruction on proximate cause in felony murder cases is IPI Criminal 4th No. 7.15A, which is separate from the other instructions defendant referenced.

¶ 53 Regardless of whether we treat defendant's citation of *Avdic* as a separate claim, it is clear that defendant's reliance on *Avdic* is misplaced, and we choose to address defendant's reliance on this case ourselves. See *In re Austin C.*, 353 Ill. App. 3d 942, 948 (2004) (reviewing the appellate courts' options in a case with an inadequate *Anders* brief, including, "excus[ing] appellate counsel's inadequate motion, review[ing] the record ourselves, and then determin[ing] whether the trial court's decision should be affirmed").

¶ 54 First, as with defendant's other jury instruction claim, defendant does not cite

Avdic to argue for a violation of any constitutional right. A petition for postconviction relief allows inquiry into constitutional issues. See 725 ILCS 5/122-1(a)(1) (West 2022); *Lawrence*, 211 Ill. App. 3d at 138. Without a connection to any constitutional right, defendant's claim cannot be raised in a petition for postconviction relief.

¶ 55 Second, any claim that the trial court failed to instruct the jury on proximate cause is barred by *res judicata*. "*Res judicata* applies when (1) a court of competent jurisdiction renders a final judgment on the merits (2) that is between the same parties and (3) involves the same cause of action." *People v. Nichols*, 2021 IL App (2d) 190659, ¶ 16. When a defendant files a successive petition for postconviction relief, "[a]ll issues decided on direct appeal or in an original postconviction petition are barred by the doctrine of *res judicata*." *Id.* ¶ 15.

¶ 56 *Avdic* found that the trial court erred by failing to give IPI Criminal 4th No. 7.15A, on causation in felony murder cases. *Avdic*, 2023 IL App (1st) 210848, ¶ 51. In defendant's first petition for postconviction relief, he claimed that his trial counsel should have requested IPI Criminal 4th No. 7.15A. This claim was incorporated into the supplemental petitions filed by his appointed counsels. The State addressed this argument in its motion to dismiss. The trial court dismissed defendant's petition. Defendant did not raise this issue when appealing the dismissal, and the appellate court affirmed. Because defendant raised essentially the same argument unsuccessfully in his initial postconviction petition, *res judicata* bars his claim. *Nichols*, 2021 IL App (2d) 190659, ¶ 15. Accordingly, we find defendant has no meritorious argument for reversal based on *Avdic* or the omission of jury instructions on felony murder and proximate cause.

¶ 57 D. Rule 651(c)

¶ 58 OSAD also considered whether defendant's postconviction counsel adequately

complied with Rule 651(c). Postconviction counsel must comply with this rule before withdrawing. *People v. Smith*, 2016 IL App (4th) 140085, ¶ 31. Rule 651(c) requires that the record

> "contain a showing, which may be made by the certificate of petitioner's attorney, that the attorney has consulted with petitioner by phone, mail, electronic means or in person to ascertain his or her contentions of deprivation of constitutional rights, has examined the record of the proceedings at the trial, and has made any amendments to the petitions filed *pro se* that are necessary for an adequate presentation of petitioner's contentions." Ill. S. Ct. R. 651(c) (eff. July 1, 2017).

If postconviction counsel filed a certificate under this rule, there is a presumption that the rule is satisfied. *People v. Johnson*, 232 Ill. App. 3d 674, 678 (1992). Where, as here, postconviction counsel did not file such a certificate, "a clear and affirmative showing of compliance on the record must be present." *People v. Richardson*, 382 Ill. App. 3d 248, 256 (2008). Strict compliance with Rule 651(c) is not required, and substantial compliance is sufficient. *Id.* at 257; see *People v. Wright*, 149 Ill. 2d 36, 63 (1992).

¶ 59 Here, postconviction counsel stated in his motion to withdraw that he "reviewed the record of the proceedings in the trial court and [defendant's] claims of error." At the May 2025 hearing, counsel represented to the court that he sent defendant the motion, and defendant sent him back a letter explaining why he disagreed with counsel's conclusion. In open court, counsel told defendant that he disagreed with defendant's claim in the letter and stood by his motion to withdraw. Counsel added that he would try to contact defendant again. At the hearing in June 2025, defendant and counsel were both present, and defendant did not mention any lack of communication. Furthermore, defendant advanced only his speedy trial claim, and he told the

trial court that he abandoned his other claim. We find this record sufficiently demonstrates that counsel examined the record and communicated with defendant about his claims.

¶ 60 Although postconviction counsel did not amend defendant's claims, we still find adequate compliance with Rule 651(c). As postconviction counsel argued in his motion to withdraw, and as we find above, defendant's speedy trial and jury instruction claims had no merit. Defendant's reliance on *Avdic* was also meritless. Accordingly, there were no amendments to defendant's claims that were necessary for an adequate presentation of these meritless claims. See *Greer*, 212 Ill. at 205 (2004) ("If amendments to a *pro se* postconviction petition would only further a frivolous or patently nonmeritorious claim, they are not 'necessary' within the meaning of the rule."). Therefore, we find any argument postconviction counsel did not substantially comply with Rule 651(c) would be meritless.

¶ 61 E. Notice of Motion to Withdraw

¶ 62 Next, OSAD concluded defendant received notice of postconviction counsel's motion to withdraw. We agree.

¶ 63 When postconviction counsel moves to withdraw, the defendant must have "a meaningful opportunity to respond" to the motion. *People v. McMillen*, 2021 IL App (1st) 190442, ¶ 17. This includes "notice and an opportunity to be heard *before* the matter is decided." (Emphasis in original). *People v. Bryant*, 2022 IL App (2d) 200279, ¶ 20.

¶ 64 Here, at the May 2025 court appearance, postconviction counsel stated that he had mailed his motion to defendant. Defendant did not dispute counsel's statement and acknowledged sending a letter in response. Additionally, at the June 2025 hearing on the motion, defendant admitted to the trial court that he received the motion. Defendant clearly received notice of the motion, he was present in court when the matter was set for hearing, and he had

adequate opportunity to contest the motion. Accordingly, we agree with OSAD no nonfrivolous argument can be made regarding notice of postconviction counsel's motion to withdraw.

¶ 65 F. Contents of Postconviction Counsel's Motion to Withdraw

¶ 66 Finally, OSAD concluded that postconviction counsel's motion to withdraw adequately responded to defendant's *pro se* claims, and it provides no basis for reversal. We agree.

¶ 67 When postconviction counsel moves to withdraw, counsel "should make some effort to explain *why* [the] defendant's claims are frivolous or patently without merit." (Emphasis in original.) *Greer*, 212 Ill. 2d at 212. Regardless of whether "a petition advances to the second stage based on judicial inaction or because the trial court found potential merit to the claims, a properly filed motion to withdraw is one that sets forth why the claims lack merit." *People v. Frey*, 2024 IL 128644, ¶ 27. When the trial court has already found that a defendant's claims are potentially meritorious, if postconviction counsel fails to address one of those claims, reversal is required. *Id.* ¶ 28. But when the petition has advanced to the second stage without such a finding, "in certain circumstances, reversal is not required." *Id.* If postconviction counsel complied with Rule 651(c) and the petition was frivolous and patently without merit, reversal is not required, even if the motion to withdraw did not address each claim in the petition. *Id.*

¶ 68 Here, counsel's motion to withdraw explained that defendant's speedy trial claim lacked merit because the delay between September 6, 2013, and October 15, 2013, was attributed to the defense, not the State. Likewise, counsel stated that the jury was instructed on the lesser included offense.

¶ 69 Counsel's motion did not cite *Avdic* or IPI Criminal 4th No. 7.15A. As discussed above, it is unclear if defendant intended to cite *Avdic* as a separate argument based on proximate

cause or simply to support his other jury instruction claim. Even if we consider it separately, however, defense counsel's motion stated, "Any remaining related arguments would pertain strictly to trial strategy, which [defendant] has thoroughly challenged both on direct appeal and in his initial post-conviction petition." As explained above, defendant asserted a claim based on IPI Criminal 4th No. 7.15A in his first postconviction petition, and the trial court dismissed that petition. Moreover, even if this succinct statement does not address defendant's reliance on *Avdic*, we still find no basis for reversal. Postconviction counsel complied with Rule 651(c), and defendant's petition, including any argument based on *Avdic*, was frivolous and patently without merit. Before advancing defendant's petition to the second stage of postconviction proceedings, the trial court here made no finding that defendant's claims were potentially meritorious. Therefore, pursuant to *Greer* and *Frey*, reversal is not warranted. *Frey*, 2024 IL 128644, ¶ 28; *Greer*, 212 Ill. 2d at 211-12.

¶ 70 III. CONCLUSION

¶ 71 For the reasons stated, we affirm the trial court's judgment and grant counsel's motion to withdraw.

¶ 72 Affirmed.