

2026 IL App (2d) 250073-U
No. 2-25-0073
Order filed October 16, 2026

NOTICE: This order was filed under Illinois Supreme Court Rule 23(b) and is not precedential except in the limited circumstances allowed under Rule 23(e)(1).

IN THE
APPELLATE COURT OF ILLINOIS
SECOND DISTRICT

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

v.

CHARLES R. OLIVER, Defendant-Appellant.

Appeal from the Circuit Court of McHenry County.
Honorable Tiffany E. Davis, Judge, Presiding.
No. 13-CF-176

JUSTICE McLAREN delivered the judgment of the court.
Presiding Justice Kennedy and Justice Schostok concurred in the judgment.

ORDER

- ¶ 1 *Held:* On remand from our reversal after holding that postconviction counsel provided unreasonable assistance by failing to frame claim of ineffective assistance of appellate counsel to address trial counsel's forfeiture of an evidentiary issue, new postconviction counsel failed to cure the deficiency we identified. Therefore, we again find unreasonable assistance of counsel and must reverse and remand for further proceedings with new appointed counsel.
- ¶ 2 Following a February 2014 jury trial, defendant, Charles R. Oliver, was found guilty of two counts of criminal sexual assault (720 ILCS 5/11-1.20(a)(1) (West 2012)) and one count of unlawful restraint (*id.* § 10-3(a)). Defendant filed a direct appeal, and we affirmed. See *People v. Oliver*, 2016 IL App (2d) 140466-U (*Oliver I*).

¶ 3 On December 15, 2016, defendant filed a *pro se* petition under the Post-Conviction Hearing Act (Act) (725 ILCS 5/122-1 *et seq.* (West 2016)), raising numerous claims of ineffective assistance of both trial and appellate counsel. The trial court advanced the petition to the second stage under the Act. See *id.* § 122-2.1(b). Postconviction counsel filed an amended petition and, later, a second amended petition. The State moved to dismiss the second amended petition, and the court granted the motion. Defendant appealed, contending that, although postconviction counsel filed a facially valid certificate under Illinois Supreme Court Rule 651(c) (eff. July 1, 2017), counsel provided unreasonable assistance in that he failed to properly amend defendant's *pro se* petition. See *People v. Oliver*, No. 2-19-0516 (2021), ¶ 2 (unpublished summary order under Illinois Supreme Court Rule 23(c)) (*Oliver II*). We reversed and remanded the case with directions to appoint new postconviction counsel and to allow defendant to replead his postconviction petition. *Id.* ¶ 10.

¶ 4 On August 27, 2024, on remand, newly appointed postconviction counsel filed a third amended postconviction petition, incorporating the previous petitions by reference and adding two new claims, along with a facially valid certificate under Rule 651(c). The State moved to dismiss the third amended petition, and defendant filed a response. The trial court granted the State's motion to dismiss, and defendant timely appealed.

¶ 5 The trial court appointed the Office of the State Appellate Defender (OSAD) to represent defendant. Per *Pennsylvania v. Finley*, 481 U.S. 551 (1987), and *People v. Lee*, 251 Ill. App. 3d 63 (1993), the appellate defender moved to withdraw as counsel, arguing that the appeal presented no issues of arguable merit. Counsel asserted, among other things, that it would be frivolous to argue that postconviction counsel did not provide reasonable assistance.

¶ 6 On December 23, 2025, we denied the motion to withdraw without prejudice. *People v. Oliver*, No. 2-25-0073 (Dec. 23, 2025) (unpublished minute order). We directed the appellate defender to file either a new motion to withdraw or a brief addressing whether, given our decision in *Oliver II*, postconviction counsel provided reasonable assistance on remand. Rather than file a new motion to withdraw, the appellate defender filed a brief.

¶ 7 On appeal, defendant contends that, although postconviction counsel filed a facially valid certificate under Rule 651(c), counsel provided unreasonable assistance by incorporating the prior postconviction petitions and adding new claims without curing the deficiencies recognized in *Oliver II*. We agree. Thus, we reverse and remand.

¶ 8 I. BACKGROUND

¶ 9 A. Pretrial

¶ 10 On March 21, 2013, defendant was indicted on two counts of criminal sexual assault (720 ILCS 5/11-1.20(a)(1) (West 2012)) and one count of unlawful restraint (*id.* § 10-3(a)), stemming from events on November 6, 2012, involving the victim, L.B.

¶ 11 On November 12, 2013, defendant filed a motion to suppress statements made to Woodstock police officers—including Detective George Kopulos Jr.—over the course of interrogations following his January 28, 2013, arrest. Defendant alleged *Miranda* violations (see *Miranda v. Arizona*, 384 U.S. 436 (1966)) as the basis for suppression. He also moved to quash search warrants and suppress evidence obtained from searches of his residence and body. The trial court denied the motions.

¶ 12 On January 7, 2014, the State filed a motion *in limine* to “admit proof of other crimes and/or sexual conduct.” The State asked to admit evidence pertaining to six different women, including B.H. In response, on January 23, 2014, defendant filed a motion to exclude evidence of sexual

conduct involving unidentified individuals—specifically, “audio video recordings and photographs of *** [d]efendant engaged in sexual conduct with unidentified individuals.”

¶ 13 On February 6, 2014, the trial court entered an order granting the State’s “other crimes motion” in part and denying it in part. The court found “that the probative value [was] not outweighed by undue prejudice regarding the testimony of other charged victims.” However, the State was barred from “produc[ing] testimony of J.A. or P.A., uncharged victims.” At the hearing on the motion, the court noted that four of the individuals referenced in the State’s motion were victims of charged offenses and two individuals (J.A. and P.A.) were not victims of charged offenses. The court stated:

“The [c]ourt finds based upon the facts presented, that the probative value of the evidence the State seeks to admit is not outweighed by the prejudicial effect. The [c]ourt is going to grant the State’s motion in part and deny it in part. The State may introduce evidence of the other charged acts. The [c]ourt would deny the State’s request to introduce acts involving JA and PA. Those are uncharged events. The [c]ourt does not want the other crimes’ [sic] evidence to become the focal point of the trial.” The court explained further: “The other crimes’ [sic] evidence which the [c]ourt is allowing would be admissible for the purpose to show defendant’s propensity to commit sex offenses[.]” The court granted “defendant’s [m]otion to [e]xclude video photo [sic] evidence of sexual conduct involving unidentified women” but limited the ruling to the State’s case-in-chief, subject to the defense “open[ing] the door regarding any of the acts depicted [in] [the] video.”

¶ 15 Although the bulk of the testimony is from *Oliver I*, and Detective Kopulos's testimony is the portion most relevant to the present appeal, we begin by briefly summarizing the background of the offenses through the testimony of L.B. and B.H. to provide the necessary context.

¶ 16 L.B. testified that, in November 2012, she responded to defendant's Craigslist advertisement for sex in exchange for money. She met him at the Rosemont CTA stop. She voluntarily performed oral sex in his car and again later in his living room. Defendant then took her to a basement laundry room, locked the door, told her she had no choice about what was going to happen, and became aggressive—pulling her hair and forcing her to kneel—until she promised not to try to escape. She accompanied defendant to an upstairs bedroom, where defendant set up a camera, compelled oral sex, and had intercourse with her. She also testified that defendant scanned her identification into his computer and threatened that he would know her identity if she went to the police. He drove her back to the CTA stop and warned her not to report what had happened. He told her that he had done similar things to other women. The next day, L.B. reported the rape at Rush Hospital. The State played a portion of a DVD for the jury. L.B. identified a video, recorded by defendant, showing them having sex in his bedroom. She also identified nude photographs defendant took of her in his bedroom.

¶ 17 B.H. testified that, in January 2013, she met defendant through a Craigslist advertisement that she had placed. She agreed to meet for possible sex in exchange for money. She met defendant at a Woodstock Walmart, and they drove to his house. She removed her clothes in the living room. She said that defendant's demeanor changed when they went to the basement, where he forced her into a laundry room with a modified doorknob, threatened to tie her up, and told her she could leave only if she complied. She then went with defendant to a bedroom. B.H. testified that

defendant acted violently, tried to choke her, and coerced oral sex and intercourse while insulting her. During the oral sex, B.H. cut defendant's scrotum with her fingernail. At one point, she saw defendant rifling through her clothes. She later noticed that her driver's license was missing. After she got dressed, she went with defendant to his car. She thought he was taking her back to her car, but he drove off in a different direction and threatened to take her to Rockford. She escaped by jumping from the car. She went to a church for help and later told police what happened. The State played a portion of a DVD for the jury. B.H. identified a video, recorded by defendant, "show[ing] [them] in the [bedroom] and [her] cutting him."

¶ 18 Kopulos testified that, on January 28, 2013, he served defendant with a body search warrant. The purpose was to take nude photographs of defendant and document any cuts on his scrotum. When told the warrant's purpose, defendant began undressing. When the State asked Kopulos whether defendant had said anything at that point, defense counsel objected and requested a sidebar. Counsel argued that eliciting any statement by defendant that "he had been through this before" would be inappropriate because "[p]rior bad acts have not be [sic] admitted." The court sustained the objection and said it would not allow the State to elicit any statement "that this is not his first time." Kopulos testified that defendant stated he "knew what [Kopulos] [was] looking for" because "the Russian girl cut him in the leg." When Kopulos observed a scab on defendant's scrotum, defendant said it was from "shaving as he was getting ready to pick up another one, a prostitute, that night." No objection was made.

¶ 19 Kopulos testified that, as defendant was taken to an interview room, defendant stated that "he paid them, he could do what he want[ed] to them." No objection was made. Defendant was advised of his *Miranda* rights and agreed to speak. In the interview, defendant said "he had a problem with prostitutes" and discussed a "church girl," later identified as B.H. He said he argued

with B.H. about money because she would not do what he wanted. Asked what else defendant said, Kopulos answered, “He had to get a little physical with her. Detective Sergeant Parsons asked if—.” Defense counsel interjected with a hearsay objection, which was sustained. Kopulos then testified that B.H. cut defendant’s leg. When the State asked whether defendant said anything about “strong-arming any of the girls,” defense counsel objected based on leading. The court sustained the objection. The State asked whether defendant said anything else about having to “get a little physical with her.” Kopulos replied, “I mean, he—he agreed that he had to get a little physical with them. There was—.” Defense counsel interrupted: “Objection, no question pending.” The court overruled the objection. When Kopulos then testified that defendant “agreed that he had to strong-arm—,” defense counsel interrupted with another hearsay objection. The court overruled the objection. The State asked Kopulos if defendant said that B.H. injured him. According to Kopulos, defendant said that B.H. cut his leg. He denied that she caused his scrotum injury and attributed it instead to shaving. He said he dropped B.H. off at a church in Woodstock, then monitored a police scanner for any response. Later, defendant heard on the scanner that Huntley police took B.H. back to her car.

¶ 20 According to Kopulos, defendant told him that “he grew up in Chicago” and that “it was easy to get prostitutes in Chicago.” Defendant said he was never popular with girls and that “this [was] more of a control thing.” Defendant said that “he likes rough stuff” and “likes calling them names such as ‘bitch’ and ‘f*** bitch’ while he’s having sex with them.” Defendant explained that he would typically meet women on Craigslist by placing an ad or responding to an ad. Defendant told Kopulos that he video recorded the encounters using eyeglasses equipped with a camera.

¶ 21 Kopulos testified that defendant initially denied that he “tied up any women.” Defense counsel moved to strike, arguing that the State was trying to elicit testimony that defendant had

“tied up some black woman on one occasion.” Counsel argued that such evidence would violate the court’s order excluding evidence of “uncharged, unidentified individuals.” The State responded that it had not “play[ed] any videos of unidentified women.” The court overruled the objection. Kopulos then testified that defendant, after initially denying that he had ever tied anyone up, admitted that “he did tie up one black girl in the past.”

¶ 22 The State then asked Kopulos whether he asked defendant “about any specific things that he would say to these women.” Defense counsel objected based on “asked and answered,” and the objection was overruled. Kopulos testified that defendant told him that “he had rules” and that “he’d bring them down there [in the basement] to discuss the rules.” Kopulos asked defendant “if he ever told anybody that he had to cum three times,” and defendant responded that “he can’t do that. He can only cum twice.”

¶ 23 Kopulos testified that, during a second interview on January 29, 2013, Kopulos asked defendant about his “rules.” Defendant told him that there “was just one rule and the rule was that he wasn’t going to wear a condom.” Defendant told Kopulos that he brought the girls to the basement “because one girl actually escaped.” Defense counsel made a general objection, which was overruled. Kopulos continued: “That one girl escaped from him out a window, so that’s why he brought them in the basement.” Defendant told Kopulos that B.H. was “the only one he strong-armed.” Kopulos clarified that defendant “didn’t say strong-armed. He said having to get rough with them.”

¶ 24 In closing argument, defendant contended that the State did not prove beyond a reasonable doubt that the sexual intercourse in the bedroom was nonconsensual and the result of force. Defendant argued that L.B. agreed to be picked up, agreed to be taken to defendant’s house, and agreed to engage in oral and vaginal sex in exchange for \$200.

¶ 25 A jury found defendant guilty as charged.

¶ 26 Defendant filed a motion for a new trial. He contended that he was denied a fair trial, based on, among other things, the admission of the following statements Kopulos attributed to defendant:

“a. In relation to being photographed nude, that *** [d]efendant stated he ‘knew what police were looking for’ and that *** [d]efendant ‘had been through this before.’

b. *** Defendant sometimes had to ‘strong arm’ the girls.

c. *** Defendant had a ‘problem with prostitutes,’ ‘they were easy to get’ and now it was a ‘control thing.’

d. *** Defendant liked ‘rough sex.’

e. *** Defendant had tied up one black girl but he paid extra for that.

f. *** Defendant went over the rules in the basement being that *** [d]efendant does not wear a condom and gets to ‘cum three times.’

g. *** Defendant took girls in the basement to go over the rules because one girl had escaped out of a window.”

Defendant argued that the admission of the foregoing statements was improper because they (1) did not “meet the common law and statutory requirements for the admissibility of other crimes evidence” and (2) were “in direct contradiction to the [c]ourt’s ruling excluding evidence of uncharged sexual conduct involving unidentified individuals.”

¶ 27 In its response, the State noted that “[d]efendant’s motion regarding unidentified women was specific to video and photo evidence.” In any event, the State noted, defendant’s statement to Kopulos that he “knew what [the police] were looking for” was in reference to the scratch on his scrotum, which was evidence relating to B.H. The State noted further that the court in fact barred the State from eliciting any statement defendant made to Kopulos that defendant “had been through

this before.” With respect to the remaining statements, the State argued that they were relevant to the charges, demonstrated defendant’s callous attitudes toward L.B. and B.H., and corroborated their testimony.

¶ 28 On May 8, 2014, the trial court denied the motion for a new trial, specifically addressing only one of defendant’s posttrial claims—a claim concerning the trial court’s decision to *sua sponte* direct the State to modify the Illinois Pattern Instruction (IPI) on consent.

¶ 29 Following a sentencing hearing, the trial court sentenced defendant to consecutive eight-year terms of imprisonment for criminal sexual assault and to one year of imprisonment for unlawful restraint, to be served concurrently.

¶ 30 C. Direct Appeal (*Oliver I*)

¶ 31 Defendant filed a direct appeal. See *Oliver I*, 2016 IL App (2d) 140466-U. He raised a single claim: that he was denied a fair trial because the trial court admitted part of a recorded telephone call between defendant and his father in which defendant purportedly repeated defense counsel’s comment that “ ‘the girls’ stories are inconsistent but there’s some truth to ’em.’ ” *Id.*

¶ 14. He contended that the statement improperly revealed counsel’s opinion of his guilt; alternatively, he claimed ineffective assistance for trial counsel’s failure to seek redaction of that remark. *Id.* ¶ 21. We held that defendant forfeited the issue and that the admission of the statement was not plain error. *Id.* ¶¶ 22, 24. We determined that, even if the statement were properly attributable to counsel, the statement was not clearly tied to guilt, given undisputed facts showing “some truth” to the victims’ accounts irrespective of guilt. *Id.* ¶ 24. We further held that the ineffective-assistance claim failed for lack of prejudice, where defendant made no argument that, had counsel moved for redaction and the motion was granted, the result of the proceeding would have been different. *Id.* ¶ 27. Thus, we affirmed. *Id.* ¶ 30.

¶ 32

D. Defendant's *Pro se* Postconviction Petition

¶ 33 On December 15, 2016, defendant filed a *pro se* petition under the Act (725 ILCS 5/122-1 *et seq.* (West 2016)). Defendant claimed that appellate counsel was ineffective for failing to argue that he was denied a fair trial in the following respects:

(1) the trial court erred in admitting evidence of other sexual conduct, including (a) portions of the phone call between defendant and his father; (b) testimony and evidence concerning B.H., and (c) statements made by defendant to Kopulos;

(2) the trial court erred in admitting videos of defendant's sexual encounters with L.B. and B.H., because (a) the videos lacked a proper foundation and (b) the jury was shown a photograph of the label of one of the DVDs played for the jury, and the label included the names of other females, which constituted evidence of uncharged conduct;

(3) the trial court erred in denying defendant's motion to quash search warrants for defendant's residence and body and in not allowing a *Franks* hearing (see *Franks v. Delaware*, 438 U.S. 154 (1978));

(4) the trial court erred in denying defendant's motion to suppress statements based on a *Miranda* violation;

(5) the trial court erred in *sua sponte* instructing the State to provide a [non-IPI instruction] on consent that added language about withdrawing consent;

(6) the trial court erred in prohibiting defendant from questioning officers about why they did not submit buccal swabs from B.H.'s mouth to the crime lab.

¶ 34 Defendant also claimed in his *pro se* petition that trial counsel was ineffective for (1) failing to object to the State playing the recording of his telephone conversation with his father and, alternatively, to request that the recording be played in its entirety, (2) failing to challenge hearsay

evidence from a jail officer at defendant's sentencing hearing, and (3) failing to call a witness who would have testified that, in January 2013, B.H. called and sent text messages to defendant asking him for money for unpaid bills. (Defendant attached an affidavit from this witness.)

¶ 35 E. Proceedings on the Amended and Second Amended Postconviction Petition

¶ 36 On February 15, 2017, the trial court advanced defendant's petition to the second stage and appointed counsel. On March 1, 2018, postconviction counsel filed an amended postconviction petition, which incorporated defendant's *pro se* petition by reference and attached the various motions, responses, and court orders referenced therein. Counsel claimed that appellate counsel was ineffective for failing to raise any of the "numerous issues" included in trial counsel's posttrial motion.¹ Counsel asserted only generally that "[a]ppellate counsel's failure to address numerous issues on direct appeal fell below an objective standard of reasonableness" and that "[defendant] was prejudiced by appellate counsel's deficient performance." Counsel attached a Rule 651(c) certificate.

¶ 37 On April 18, 2018, the State filed a brief motion to dismiss the amended petition. The State noted that "[t]he issues raised by *** defendant could have been brought on direct appeal" and that "defendant attempt[ed] to circumvent the doctrine of *res judicata* by claiming ineffective assistance of appellate counsel." The State noted, however, that appellate counsel is not required to raise every conceivable issue. The State contended that defendant failed to establish deficient

¹We note that the "numerous issues" included in the posttrial motion were the same issues raised by defendant in his *pro se* postconviction petition, with one exception—the posttrial motion included a claim that appellate counsel was ineffective for failing to argue that the trial court erred in prohibiting counsel from questioning B.H. about her conduct after the alleged assault, which purportedly showed her lack of fear of defendant or concern that he could locate her.

performance and, in any event, failed to argue that, even if counsel had raised any of the numerous issues, the result of defendant's appeal would have been different. The State concluded: "[Defendant] is not entitled to simply attack the performance of appellate counsel because the attorney handling the appeal did not raise every conceivable issue and attack every single ruling of the trial court."

¶ 38 On February 8, 2019, postconviction counsel filed a second amended postconviction petition and a new Rule 651(c) certificate. The second amended petition again incorporated defendant's *pro se* petition and attached various exhibits. This time, postconviction counsel claimed that appellate counsel was ineffective for failing to raise the following three issues on appeal: (1) the evidence was insufficient to prove defendant guilty beyond a reasonable doubt; (2) the trial court erred in admitting "certain propensity evidence," specifically, (a) defendant's statements during the telephone call with his father, (b) B.H.'s testimony about an alleged sexual assault, and (c) "evidence of uncharged other acts of sexual conduct in the form of alleged statements made by *** [d]efendant at the Woodstock [p]olice [station]"; and (3) the trial court erred in admitting certain evidence—"testimonial, videotaped, and warrants"—which resulted in undue prejudice and denied defendant a fair trial. With respect to each argument, postconviction counsel concluded that appellate counsel's failure to raise the issue fell below an objective standard of reasonableness and that defendant was prejudiced as a result.

¶ 39 On April 24, 2019, the trial court held a hearing on the State's motion to dismiss. On June 14, 2019, the court granted the motion in a written order. First, the court found that the evidence was sufficient to prove defendant's guilt. The court stated that, viewing the evidence in the light most favorable to the State, the jury could have reasonably found that, although L.B. may have initially consented to sexual conduct, she later withdrew consent. Thus, it concluded that appellate

counsel was not unreasonable for failing to raise a sufficiency-of-the-evidence challenge on appeal and, further, that there was no reasonable probability that the result of the proceeding would have been different had he done so.

¶ 40 Second, the trial court found that appellate counsel was not ineffective for failing to raise claims regarding certain propensity evidence. With respect to the statements made by defendant to his father, the court found that the claim was barred by *res judicata* as it was raised on direct appeal. With respect to B.H.'s testimony, the court found that defendant failed to show that the testimony was improperly admitted. Thus, the court concluded that appellate counsel was not unreasonable for failing to challenge her testimony and that there was no reasonable probability that, even if he had, the result of the proceeding would have been different.

¶ 41 With respect to defendant's statements to Kopulos (which defendant claimed were evidence of "uncharged other acts of sexual conduct"), the trial court noted that the statements were not included in the second amended petition (they were included in defendant's *pro se* petition). Thus, the court used the motion for a new trial as a reference. The court found that, although trial counsel did object to the admissibility of some of the statements, counsel did not raise an objection on the basis now asserted, *i.e.*, that the statements represented other-crimes evidence. Thus, the court concluded that the challenge to the statements was forfeited and that "appellate counsel was not ineffective for fail[ing] to raise these issues on appeal." The court explained:

"At no time prior to trial did [d]efendant file a motion *in limine* asking the [c]ourt to bar [d]efendant's statements based on other crimes or bad acts. He did, however, file a [m]otion to [s]uppress [d]efendant's statements based upon an alleged violation of *Miranda* (*Miranda v. Arizona*, [384 U.S. 436 (1966)]). The [c]ourt held a hearing in [sic] the

[m]otion to [s]uppress and after hearing testimony from the officers involved and *** [d]efendant, denied same, on February 6, 2014. Defendant now asserts that it was error for the [c]ourt to admit these statements[,] contending they represent other-crimes evidence and were prejudicial to [d]efendant, a different theory regarding the admissibility of the statements, then [sic] previously argued.

In order to preserve an error for review, a defendant must object to the error at trial and include the objection in a post-trial motion. *People v. McLaurin*, 235 Ill. 2d 478, 485 (2009). [Illinois Rule of Evidence 103(a)(1) (eff. Oct. 15, 2015)] requires a timely objection stating the specific ground of the objection. A mere objection is not enough to preserve an error for review. *People v. Watt*, 2013 IL App (2d) 120183, citing *York v. [El-Ganzouri]*, 353 Ill. App. 3d 1, 17 (2004). To preserve an error, an objection must be timely, meaning contemporaneous with the objectionable conduct, and the objecting party must identify the same basis for the objection that he will argue on appeal. *York*, 353 Ill. App. 3d at 17-18. A general objection raises the question of relevancy and materiality only. Failure to properly preserve an error operates as a forfeiture, as to that issue. *People v. Ward*, 154 Ill. 2d 272, 293 (1992). The statements [d]efendant takes issue with were presented through the testimony of Detective George Kopulos, of the Woodstock Police Department. As to the statement of [d]efendant that he ‘had been through this before’ an objection was made and sustained ***; with respect to the statement he had to ‘strong arm the girls,’ the State asked a question attempting to elicit this information three times. On the State’s first attempt, [d]efendant made an objection based on hearsay, which was sustained[;] on the State’s second attempt *** [d]efendant made an objection based on leading, which was sustained[;] and on the third attempt no objection was made until the

witness began his answer and defense objected, stating ‘no question pending’ which was overruled. The [d]etective then testified ‘he (referring to [d]efendant) agreed that he had strong armed the girls.’ Thereafter, another general objection based on hearsay was made by defense interrupting the witness[’s] answer. That objection was overruled ***. With respect to the testimony regarding [d]efendant’s statements that: [d]efendant had a ‘problem with prostitutes’ ‘they were easy to get[’] and now it was a ‘control thing’; he ([d]efendant) liked ‘rough sex’; he gets to ‘cum three times’, no objections were made. *** . As to testimony that [d]efendant stated he had tied up the black girl, but paid extra for that, [d]efendant objected based on a violation of a motion *in limine*, which was overruled. *** The statement made by [d]efendant that he took girls to the basement to go over the rules because one girl had escaped out of a window, an objection was made stating asked and answered. That objection was also overruled. ***.

Based upon a review of the record herein, the [c]ourt finds that [d]efendant failed to properly preserve these issues, and they are therefore forfeited *[sic]*. While [d]efendant did argue the issue regarding [d]efendant’s statements based on uncharged sexual conduct in his post-trial motion, he did not make a proper objection contemporaneous at the time of the questions. Defendant made several specific objections[;] however[,] these objections were not based on other crimes or bad acts. The theory he now argues in his post-trial motion. A specific objection forfeits all other, unspecified objections. *People v. Macri*, 185 Ill. 2d 1, 75 (1998). Further, the general objections made by [d]efendant, are construed as being only to the relevancy of the proffered evidence. Defendant does not contend that his statements were not relevant. Based on the foregoing and the trial court record, the [c]ourt finds, that the appellate

counsel was not ineffective for failure to raise these issues on appeal, as there is not [a] reasonable probability that if he had done so, it would not [sic] have changed the outcome of the appeal. See: *People v. Golden*, 229 Ill. 2d 277 (2008).”

¶ 42 The trial court also rejected defendant’s claims that it erred by admitting the videos involving L.B. and B.H. because foundation was lacking. Further, the court found that defendant failed to make a substantial showing that the trial court erred by denying his motions to quash search warrants. Finally, the court found that defendant did not establish that the trial court’s ruling on his motion to suppress his statements to law enforcement was unreasonable or arbitrary. Thus, the court concluded that appellate counsel was not ineffective for failing to raise the issues.

¶ 43 F. Appeal from the Dismissal of the Second Amended Petition (*Oliver II*)

¶ 44 Following the trial court’s grant of the State’s motion to dismiss the second amended petition, defendant timely appealed. See *Oliver II*, No. 2-19-0516 (2021) (unpublished summary order under Illinois Supreme Court Rule 23(c)).

¶ 45 On appeal, defendant contended that, although postconviction counsel filed a Rule 651(c) certificate, he provided unreasonable assistance by failing to put certain claims regarding the ineffective assistance of appellate counsel into proper legal form. *Id.* ¶ 2. Specifically, he asserted that postconviction counsel (1) failed to modify his claim that appellate counsel was ineffective for failing to challenge the admission of uncharged sexual conduct to include an argument that trial counsel was ineffective for failing to preserve the error for review; (2) failed to argue that appellate counsel’s failure to raise certain issues regarding the admission of evidence was objectively unreasonable and that there was a reasonable probability that, absent such failure, defendant’s convictions would have been reversed; and (3) failed to develop and properly shape certain claims that defendant had included in his *pro se* petition by explaining how trial and appellate counsel’s

failures to raise those claims was objectively unreasonable and how, absent such failures, the result of the trial or appeal would have been different. *Id.* Defendant contended that, irrespective of whether he suffered any prejudice from postconviction counsel's unreasonable assistance, he was entitled to a remand and appointment of new postconviction counsel. *Id.*

¶ 46 Defendant's first argument—that postconviction counsel provided unreasonable assistance by failing to modify defendant's claim that appellate counsel was ineffective for not challenging the admission of purported uncharged-conduct evidence (namely, defendant's statements to Kopulos)—was grounded in the trial court's ruling that any challenge to the admissibility of those statements had been forfeited. The forfeiture arose because trial counsel failed to properly object to the various statements. Defendant noted that, while trial counsel objected to some of the statements, those objections invoked different grounds. Only once did counsel object to a statement based on the motion *in limine*—an objection the court overruled. Defendant stressed that the trial court's order granting his motion *in limine* excluded only videos and photographs, not defendant's statements. Thus, defendant argued that, because the trial court deemed the underlying evidentiary claim forfeited, it concluded that appellate counsel could not be ineffective for failing to raise a procedurally defaulted issue.

¶ 47 In response, the State did not contest that postconviction counsel provided unreasonable assistance by failing to appropriately amend the petition to allege certain claims of ineffective assistance of counsel. *Id.* ¶ 6. Instead, the State argued that, where postconviction counsel files a Rule 651(c) certificate, a defendant must show that he suffered prejudice from unreasonable assistance. *Id.* We disagreed. *Id.*

¶ 48 We held:

“[T]he case law makes plain that, even if postconviction counsel files a Rule 651(c) certificate and an amended petition, it is patently unreasonable for counsel not to avoid forfeiture by alleging appellate counsel’s ineffectiveness. [Citation.] It is undisputed that postconviction counsel here failed to properly amend the *pro se* petition regarding the claims of ineffective assistance of appellate counsel. That failure was plainly unreasonable.” ¶ 9.

Thus, we reversed the judgment and remanded the case with directions to appoint new postconviction counsel and to allow defendant to replead his postconviction petition. *Id.* ¶ 10.

¶ 49 G. Proceedings Following Remand on the Third Amended Postconviction Petition

¶ 50 On remand, on February 9, 2022, the trial court appointed special public defender Brian Stevens to represent defendant in the postconviction proceedings. On August 27, 2024, Stevens filed a “Third Amended Post-Conviction Petition.”

¶ 51 In the third amended petition, Stevens presented the main argument as follows:

“[Defendant] received ineffective assistance of trial counsel, which fell below an objective standard of reasonableness and [defendant] was prejudiced by trial counsel’s deficient performance. The State committed prosecutorial misconduct which led to a deprivation of and violation of [defendant’s] rights. Further, [defendant] received ineffective assistance of appellate counsel for failing to raise the ineffective assistance of trial counsel and for failing to raise the issue of prosecutorial misconduct, all of *** which fell below an objective standard of reasonableness and [defendant] was prejudiced by appellate counsel’s deficient performance. All of the specific instances are as detailed below.”

After setting forth the relevant legal authority, Stevens then “reallege[d] and incorporate[d] by reference, in [their] entirety,” each previously filed petition, “including all of the allegations, case law, arguments and exhibits.” He did not elaborate on or specifically address any of the arguments contained in any of those previously filed petitions.

¶ 52 Stevens also raised two additional claims. First, he claimed that defendant received the ineffective assistance of counsel, and that his due process rights were violated, because trial counsel failed to seek a motion for a change of venue due to prejudicial pretrial publicity. He claimed further that appellate counsel was ineffective for failing to raise trial counsel’s ineffectiveness on appeal, which “fell below an objective standard of reasonableness,” and that “[defendant] was prejudiced by appellate counsel’s deficient performance.” Stevens cited 15 “news article[s]” but failed to attach them to the petition.

¶ 53 Second, Stevens claimed:

“[Defendant] received ineffective assistance of trial counsel, which fell below an objective standard of reasonableness and which resulted in cumulative error [sic], [defendant] was prejudiced by trial counsel’s deficient performance. Further, [defendant] received ineffective assistance of appellate counsel for failing to raise the ineffective assistance of trial counsel and for failing to raise any issues of prosecutorial misconduct, related thereto, all of which fell below an objective standard of reasonableness [sic] resulted in cumulative error, and [defendant] was prejudiced by appellate counsel’s deficient performance. [Defendant] will not repeat all of the errors that have been pointed out in this [p]etition, but it should be noted that [defendant] believes that each of these errors is serious enough to cause a new trial. Cumulatively, however, this is even more so.”

Stevens did not specify the “prosecutorial conduct” to which he referred.

¶ 54 In accordance with Rule 651(c), Stevens certified as follows:

“1. I have consulted with the [d]efendant/[p]etitioner, Charles Oliver, by phone and by mail, to ascertain his contentions of deprivation of constitutional rights.

2. I have examined the record of proceedings at trial.

3. I have made any amendments to the [p]etition that was filed *[p]ro [s]e* that are necessary for adequate presentation of [d]efendant/[p]etitioner’s contentions.”

¶ 55 On October 9, 2024, the State filed a motion to dismiss the third amended petition, contending that defendant’s “claims are procedurally barred and wholly insufficient, as a matter of law, to establish a *substantial violation* of his constitutional rights.” (Emphasis in original.) The State commented that “[defendant] employs numerous claims of ineffective assistance of trial and appellate counsel as a vehicle to obtain consideration of procedurally defaulted claims. However, all of [defendant’s] claims are wholly without merit.” The State then addressed the claims in turn.

¶ 56 First, the State addressed Stevens’s newly added claims related to prosecutorial misconduct and trial counsel’s failure to file a motion for change of venue. The State argued that defendant’s claim of ineffective assistance of trial and appellate counsel for failing to raise the issue of “prosecutorial misconduct” was not well pled and should be rejected, noting that defendant failed to identify the specific misconduct. The State next argued that defendant’s claims of ineffective assistance of trial counsel for failing to move for a change of venue and ineffective assistance of appellate counsel for failing to raise the issue were not properly pled or supported by the record, statute, or case law.

¶ 57 Next, the State addressed the claims of ineffective assistance of both trial and appellate counsel raised in defendant’s initial *pro se* petition. Before doing so, however, the State commented in a footnote:

“Appointed post-conviction counsel again has chosen to adopt in its entirety the *pro se* petition at the second stage proceedings. Given the unfortunate remand history, the People will address the substance of each claim and do not seek a ruling based upon forfeiture. See *People v. Addison*, 2023 IL 127119, ¶ 39.”

The State then contended that appellate counsel was not ineffective for failing to raise certain claims asserted in defendant’s *pro se* petition, because they lacked merit. Specifically, the State argued that (1) the “propensity evidence”—specifically, B.H.’s testimony—was properly admitted, and *res judicata* barred any challenge to the admission of defendant’s statements to his father during the phone call;² (2) the videos of defendant’s sexual encounters with L.B. and B.H. were supported by adequate foundation; (3) the trial court’s rulings on the motion to quash the search warrants for defendant’s residence and body were proper; (4) the trial court properly denied defendant’s motion to suppress his statements as there was no *Miranda* violation and defendant’s statements were voluntary; (5) the trial court’s modification of the IPI instruction on the definition of consent was appropriate; and (6) the trial court properly limited cross-examination of police officers on why they did not pursue certain DNA evidence as to B.H. Thus, according to the State, appellate counsel could not be deemed unreasonable for failing to raise meritless issues and, further, defendant could not establish prejudice.

¶ 58 The State then addressed the ineffective-assistance-of-trial-counsel claims raised in defendant’s *pro se* petition. The State argued that (1) *res judicata* barred defendant’s claim that trial counsel should have objected to the admission of defendant’s recorded telephone call with his father or, alternatively, requested that the entire recording be played; (2) counsel’s failure to

²The State did not comment on defendant’s claims regarding the admissibility of certain statements made by defendant to Kopulos.

challenge certain hearsay testimony at the sentencing hearing was not unreasonable as hearsay evidence is admissible at sentencing; and (3) counsel’s failure to call defendant’s proposed witness at trial was a strategic choice that cannot support an ineffectiveness claim.

¶ 59 Last, the State addressed the claim raised in the amended and second amended petitions that appellate counsel was ineffective for failing to challenge the sufficiency of the evidence. The State argued that, viewing the evidence in the light most favorable to the State, it was not unreasonable or improper for the jury to find defendant guilty. Thus, the State maintained that appellate counsel was not unreasonable for failing to challenge the evidence and that, even if he had done so, there was not a reasonable probability that the outcome of the appeal would have been successful.

¶ 60 On November 20, 2024, Stevens filed a response. He did not file a new amended petition or a new Rule 651(c) certificate. In his response, Stevens argued generally that

“[defendant] received ineffective assistance of appellate counsel and trial counsel and that ineffective assistance fell below an objective standard of reasonableness and [defendant] was prejudiced by appellate counsel’s and trial counsel’s deficient performances, and, thus, [defendant] was denied a fair trial.”

Stevens then developed the arguments that were raised in defendant’s *pro se* postconviction petition concerning appellate counsel’s ineffectiveness, which he had previously merely adopted in the third amended petition. Stevens argued that “[a]ppellate [c]ounsel was ineffective in failing to raise the issue that the trial court erred” by (1) “allowing into evidence [defendant’s] uncharged and charged prior sexual conduct”; (2) “not quashing the [s]earch [w]arrants issued and executed in this matter, and pursuant to [defendant’s] [m]otions to [q]uash [s]earch [w]arrants and [s]uppress [e]vidence”; (3) “denying [defendant’s] [m]otion to [s]uppress [s]tatements”; (4) “giving,

sua sponte, a non-IPI instruction over an IPI instruction”; and (5) “prohibiting questioning of law enforcement regarding the failure to test certain evidence.” With respect to each argument, Stevens asserted only generally that appellate counsel’s actions “fell below an objective standard of reasonableness and [defendant] was prejudiced by appellate counsel’s deficient performance.”

¶ 61 With respect to his argument regarding the admission of defendant’s statements as evidence of uncharged conduct, Stevens asserted:

“The trial court allowed into evidence uncharged sexual conduct that was the result of an interview between [defendant] and law enforcement during which statements were made by [defendant], on or about January 28-29, 2013, including the alleged statements that [defendant] ‘like [*sic*] rough sex’, that [defendant] had tied up a black girl but paid extra for that, that [defendant] had certain rules for the prostitutes that he employed.

All of said statements amounted to uncharged sexual conduct, that did not include witnesses or complainants in the case at bar, and therefore, should not have been admitted into evidence. Further, they were inflammatory and the prejudicial effect far outweighed the probative value of the uncharged sexual conduct and proclivities.

* * *

[A]ppellate counsel’s failure to raise the above issues was ineffective and *** fell below an objective standard of reasonableness and [defendant] was prejudiced by appellate counsel’s deficient performance.”

¶ 62 Stevens also addressed two of three ineffective-assistance-of-trial counsel claims that were raised in defendant’s *pro se* postconviction petition. He asserted that trial counsel was ineffective for failing to (1) “object to the State playing selected portions of an audio/video conversation between [defendant] and his father and/or for not offering the entirety of said audio/video into

evidence in their case-in-chief,” and (2) “call a witness for [defendant] that would have impeached a witness utilized in the [c]omplaint for the [s]earch [w]arrant.” Stevens also reiterated the claim that trial counsel was ineffective for failing to file a motion for change of venue based upon unfair pretrial publicity.

¶ 63 Finally, Stevens alleged generally that

“[defendant] received ineffective assistance of trial counsel, which fell below an objective standard of reasonableness and which resulted in cumulative error, [defendant] was prejudiced by trial counsel’s deficient performance. Further, [defendant] received ineffective assistance of appellate counsel for failing to raise the ineffective assistance of trial counsel and for failing to raise any issues of prosecutorial misconduct, related thereto, all of which fell below an objective standard of reasonableness resulted in cumulative error, and [defendant] was prejudiced by appellate counsel’s deficient performance.”

¶ 64 A hearing took place on November 21, 2024. At the outset of the hearing, the State contended, “[The claims] are not well pleaded and they are positively rebutted by the record and not supported by any independent evidence ***. *** [T]his should be dismissed in its entirety because all of these claims are procedurally barred. They’re insufficient as a matter of law.” The State argued further: “[W]e only get here by the recurrent refrain of ineffective assistance of trial counsel, and now every single one [of] those has raised appellate counsel as well.” The State commented:

“Mr. Stevens *** suggests alternative strategies, but we don’t [*sic*] amount to anything more than a bald conclusion that it should’ve been done this way and here’s a prejudice piece. It’s simply a conclusion of law with no factual support underneath it and that is the same with the prejudice prong.”

The State then argued in support of its motion to dismiss.

¶ 65 In response, Stevens began his argument by reciting the *Strickland* standard and telling the trial court that “the bulk of the issues here are appellate counsel ineffective assistance, that’s the majority, and then there are some trial counsel ineffective assistance, and those are the ones I would touch upon.” Stevens maintained that “all of these issues that are brought before the [c]ourt in the postconviction [petition] that indicate the appellate counsel should have raised were all preserved by either timely objections and/or posttrial motions by trial counsel.”

¶ 66 With respect to the claim concerning the admissibility of defendant’s statements to Kopulos, Stevens argued:

“Judge, I would also point out that the [c]ourt—and the appellate counsel should have raised this—that the [c]ourt made a ruling that the uncharged conduct would not be allowed in. However, Judge, the uncharged conduct was allowed in in a backdoor way, essentially through statements that the defendant *** gave during one of the various interrogations, and it came in under that way where it was uncharged and generally amorphous and didn’t really relate to any particular individuals and certainly no individuals in the case at bar.

But those statements that were made, Judge, are part of the record and also part of the motion for new trial that’s incorporated within here and incorporated in a second amended petition by Mr. Mourelatos [(initial postconviction counsel)]. But essentially, Judge, a lot of that uncharged sexual conduct in the form of statements was that—that came into evidence was that the defendant sometimes had to strong arm girls, that they were easy to get, that there was a control thing, the defendant liked rough sex, that he tied up one girl, but paid extra for that, that one girl—they went over the rules, but she tried to escape out

the window. None of those individuals were discussed in any names, Judge, but they were essentially uncharged sexual conduct or conduct in general that was—ultimately was allowed in. And *** appellate counsel *** should have brought that issue up because that was not only uncharged, but it was in direct violation of the [c]ourt’s order saying that—and a direct contradiction saying that the [c]ourt would not allow uncharged conduct.”

¶ 67 On January 31, 2025, the trial court entered an order dismissing the third amended petition “[f]or the reasons stated on the record.” In issuing its oral ruling, the court agreed with the State that defendant’s claims were “procedurally barred [and] wholly insufficient as a matter of law to establish substantial violations of his constitutional rights.” The court found that “all of [defendant’s] claims [were] not well pled.” The court stated that “[n]othing in *** [the] petition *** establishe[d] deficient performance other than to list a variety of complaints regarding what was or wasn’t appealed.” Thereafter, the court commented on the merits of each argument raised in the petitions; however, it did not address the claim regarding appellate counsel’s failure to raise the issue regarding the admission of defendant’s statements to Kopulos. With respect to Stevens’s allegations that trial and appellate counsel were ineffective for failing to raise claims of prosecutorial misconduct, the court found that Stevens “[did not] identify the subject matter that he [was] complaining about specifically” or “provide[] references to specific instances where his trial counsel should have acted differently” with respect to any misconduct. The court noted that “it is *** [d]efendant’s job to define the issues and bear the burden of argument.”

¶ 68 H. Appellate Counsel’s Motion to Withdraw

¶ 69 Defendant filed a notice of appeal, and the trial court appointed OSAD to represent defendant. Per *Pennsylvania v. Finley*, 481 U.S. 551 (1987), and *People v. Lee*, 251 Ill. App. 3d 63 (1993), the appellate defender moved to withdraw as counsel, stating he read the record and

found no issue of arguable merit. Among other things, counsel asserted that it would be frivolous to argue that postconviction counsel did not provide reasonable assistance. On December 23, 2025, we denied the motion to withdraw without prejudice. We directed counsel to file “either a new motion to withdraw or a brief addressing whether, given [*Oliver II*], postconviction counsel provided reasonable assistance on remand where he incorporated the previously filed postconviction petitions into a third amended postconviction petition without curing any deficiencies.” *Oliver*, No. 2-25-0073 (Dec. 23, 2025) (unpublished minute order). Counsel filed a brief.

¶ 70

II. ANALYSIS

¶ 71 Defendant contends that, although postconviction counsel filed a facially valid Rule 651(c) certificate, the presumption that counsel provided reasonable assistance is rebutted by the record, because he (1) failed to comply with our instructions in *Oliver II* to put certain claims of ineffective assistance of appellate counsel into proper legal form and (2) failed to shape defendant’s claims regarding ineffective assistance of trial and appellate counsel into proper legal form, including by failing to amend the petition to allege counsel’s deficient performance prejudiced that defendant. Defendant asks us to reverse the dismissal of his postconviction petition and remand for further second-stage proceedings, with the appointment of new postconviction counsel.

¶ 72 The Act allows a criminal defendant to raise a claim that his conviction resulted from a substantial violation of his constitutional rights. 725 ILCS 5/122-1(a)(1) (West 2022); *Addison*, 2023 IL 127119, ¶ 18. The Act provides a three-stage mechanism for adjudicating such a claim. *Addison*, 2023 IL 127119, ¶ 18. At the first stage, the trial court independently reviews the petition and determines whether to dismiss it as frivolous or patently without merit. 725 ILCS 5/122-2.1(a)(2) (West 2022); *Addison*, 2023 IL 127119, ¶ 18. If a petition is not summarily dismissed at

the first stage, it advances to the second stage, where the trial court may appoint counsel for an indigent defendant and the State may either answer or move to dismiss the petition. 725 ILCS 5/122-2.1(b), 122-4, 122-5 (West 2022); *Addison*, 2023 IL 127119, ¶ 18. At the second stage, dismissal of the petition 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.” *People v. Hall*, 217 Ill. 2d 324, 334 (2005). “Issues that were raised and decided on direct appeal are barred by *res judicata*, and issues that could have been raised on direct appeal, but were not, are forfeited.” *People v. English*, 2013 IL 112890, ¶ 22. If the defendant makes a substantial showing of a constitutional violation, the petition advances to the third stage, where the trial court conducts an evidentiary hearing. 725 ILCS 5/122-6 (West 2022); *People v. Pendleton*, 223 Ill. 2d 458, 472-73 (2006).

¶ 73 “In a postconviction proceeding, there is no constitutional right to the assistance of counsel.” *Addison*, 2023 IL 127119, ¶ 19. Rather, the right to counsel arises from the Act. *People v. Perkins*, 229 Ill. 2d 34, 42 (2007). Under the Act, a petitioner is entitled to “a ‘“reasonable” level of assistance’ ” at the second and third stages of postconviction proceedings. *Addison*, 2023 IL 127119, ¶ 19 (quoting *People v. Flores*, 153 Ill. 2d 264, 276 (1992)). To ensure the reasonable level of assistance required by the Act, Rule 651(c) imposes three duties on postconviction counsel. *Perkins*, 229 Ill. 2d at 42.

“[C]ounsel must: (1) consult with the petitioner either by mail or in person to ascertain the contentions of deprivation of constitutional rights; (2) examine the record of the trial court proceedings; and (3) make any amendments to the *pro se* petition necessary for an adequate presentation of the petitioner’s contentions.” *Id.* at 42; Ill. S. Ct. R. 651(c) (eff. July 1, 2017).

¶ 74 Compliance with Rule 651(c) is mandatory. *Addison*, 2023 IL 127119, ¶ 21. When postconviction counsel files a Rule 651(c) certificate attesting that counsel has complied with the rule, there is a rebuttable presumption that counsel has provided reasonable assistance. *Id.* In such a case, it is the defendant’s burden to overcome the presumption. *Id.* The defendant may rebut the presumption “by, *inter alia*, demonstrating that postconviction counsel did not make all necessary amendments to the *pro se* petition.” *Id.*; *People v. Turner*, 187 Ill. 2d 406, 414 (1999). “This includes making amendments that are necessary to overcome procedural bars.” *Addison*, 2023 IL 127119, ¶ 21; *Perkins*, 229 Ill. 2d at 44. When postconviction counsel fails to shape claims into proper form, the defendant rebuts the presumption of reasonable assistance that arose from counsel’s Rule 651(c) certificate, and remand is warranted, regardless of whether the claims were meritorious. *Addison*, 2023 IL 127119, ¶ 44; see *People v. Kulpin*, 2025 IL App (2d) 240065, ¶ 14 (“ ‘Under Rule 651(c), postconviction counsel has an obligation to present a defendant’s postconviction claims in the appropriate legal form, and the failure to do so constitutes unreasonable assistance.’ ” (quoting *People v. Nitz*, 2011 IL App (2d) 100031, ¶ 18)). Whether postconviction counsel provided reasonable assistance is reviewed *de novo*. *Kulpin*, 2025 IL App (2d) 240065, ¶ 15.

¶ 75 Here, Stevens filed a facially valid certificate showing his compliance with Rule 651(c). Thus, we presume that counsel provided reasonable assistance. Nevertheless, defendant contends that the record rebuts that presumption because Stevens “disregarded this [c]ourt’s order and failed to properly amend [defendant’s] claims of ineffective assistance of appellate counsel.” Defendant asserts that, “[i]nstead of amending [defendant’s] claims, he added two new claims alleging that [defendant] should have received a change of venue at trial and the State engaged in prosecutorial misconduct.”

¶ 76 In response, the State maintains that Stevens’s representation was reasonable. It argues that Stevens complied with *Oliver II*, noting that “in the third amended postconviction petition, [Stevens] not only incorporated all of the claims contained in defendant’s previous postconviction petition, but also clearly argued that defendant received ineffective assistance of both trial and appellate counsel as to each of the underlying claims previously raised.” The State further argues that it understood defendant to be raising ineffective assistance of both trial and appellate counsel and that it did not move to dismiss based on forfeiture. The State also asserts that Stevens had no obligation to advance frivolous claims.

¶ 77 We agree with defendant that the record rebuts Stevens’s Rule 651(c) certificate. The State essentially asks us to conclude that Stevens’s addition of general allegations of ineffective assistance of trial and appellate counsel, along with the recitation of boilerplate legal principles, in the third amended petition was sufficient to encompass all prior claims and to “clearly argue[]” the requisite elements as to each underlying claim. Although such an interpretation could be justified under some circumstances, it is not justified here.

¶ 78 Stevens incorporated into the third amended petition defendant’s *pro se* allegation—as Stevens phrased it—that “[a]ppellate counsel was ineffective in failing to raise the issue that the trial court erred in allowing into evidence [defendant’s] uncharged and charged prior sexual conduct,” which included a challenge to the admissibility of many of defendant’s statements to Kopulos. Stevens thus determined that this *pro se* claim, among others, was worth pursuing. However, Stevens failed to shape it into the proper form. The trial court, in dismissing the second amended petition, found that the issue regarding defendant’s statements had been forfeited, yet Stevens did not acknowledge forfeiture. See *People v. Thompson*, 238 Ill. 2d 598, 611-12 (2010) (to preserve an issue for review, a defendant must raise an objection both at trial and in his posttrial

motion). Stevens argued that the statements were improperly admitted in violation of the “[c]ourt’s order,” but that order barred evidence concerning two specific victims (J.A. and P.A.), and defendant’s own motion *in limine* was specific to video and photo evidence. The court did not consider, before trial, the admissibility of defendant’s statements purportedly related to uncharged conduct. Thus, to preserve an issue regarding such statements, trial counsel needed to object both at trial and in his posttrial motion. See *id.* Trial counsel’s failure to do so forfeited the issue on appeal.

¶ 79 To overcome forfeiture on appeal, appellate counsel could have raised the issue as plain error. “The plain-error doctrine permits a reviewing court to by-pass normal rules of forfeiture and consider ‘[p]lain errors or defects affecting substantial rights *** although they were not brought to the attention of the trial court.’ ” *People v. Eppinger*, 2013 IL 114121, ¶ 18 (quoting Ill. S. Ct. R. 615(a) (eff. Jan.1, 1967)). This required establishing that admission of the statements was “clear or obvious” error and either that (1) “the evidence [was] so closely balanced that the error alone threatened to tip the scales of justice against *** defendant, regardless of the seriousness of the error,” or (2) the error was “so serious that it affected the fairness of *** defendant’s trial and challenged the integrity of the judicial process, regardless of the closeness of the evidence.’ ” (Internal quotation marks omitted.) See *People v. Sebbby*, 2017 IL 119445, ¶ 48.

¶ 80 Additionally, appellate counsel could have argued that trial counsel was ineffective for failing to object to admission of the statements. See *People v. Gilker*, 2023 IL App (4th) 220914, ¶ 73 (raising a forfeited challenge to the trial court’s admission of evidence by arguing plain error and, alternatively, ineffective assistance of counsel). A claim of ineffective assistance of counsel is reviewed under the two-pronged *Strickland* test. *Strickland v. Washington*, 466 U.S. 668, 688, 694 (1984). To establish an ineffectiveness claim, appellate counsel would have had to show both

that (1) counsel's failure to challenge the evidence fell "below an objective standard of reasonableness" and (2) "absent counsel's errors, there is a reasonable probability that the result of the proceeding would have been different." *Gilker*, 2023 IL App (4th) 220914, ¶ 77.

¶ 81 Accordingly, because the issue regarding the trial court's admission of defendant's statements was forfeited (as noted by the trial court in dismissing the second amended petition), Stevens could not simply allege that appellate counsel was ineffective for failing to argue that the trial court erred in admitting defendant's statements. The *Strickland* standard applies equally to claims of ineffective assistance of appellate counsel. *People v. Petrenko*, 237 Ill. 2d 490, 496 (2010). Thus, under *Strickland*, Stevens was required to allege that appellate counsel's failure to raise the issue as either (1) plain error or (2) ineffective assistance of trial counsel was objectively unreasonable and that but for counsel's failure to do so, there is a reasonable probability that the appeal would have been successful. See *id.* at 496-47. He did not do so.

¶ 82 As noted, Stevens did not set forth any of defendant's *pro se* claims in the third amended petition. Instead, the third amended petition consisted of (1) boilerplate legal principles, (2) incorporation by reference of all previous petitions with no discussion as to how the cited principles applied to any of the incorporated claims, and (3) two new claims. Stevens's response to the State's motion to dismiss developed, to some degree, the argument that the court erred in admitting some of defendant's statements to Kopulos, but Stevens did not amend the petition or file a new Rule 651(c) certificate. Although he asserted that appellate counsel was ineffective for failing to raise the issue, he did not argue that counsel's representation fell below an objective standard of reasonableness for (1) failing to raise the issue as plain error or (2) failing to argue trial counsel's ineffectiveness. Nor did he do so at the hearing, where he argued only that "appellate

counsel should have raised this.” Under the circumstances, this falls short of what was needed to properly shape the claim.

¶ 83 The State argues that Stevens’s representation was reasonable and that no remand is required. It notes that it “never sought to proceed with a forfeiture argument in its motion to dismiss” and, instead, “chose to attack the merit of defendant’s claims of ineffective assistance of trial and appellate counsel.” To be sure, in its motion to dismiss the third amended petition, the State noted in a footnote that “[a]ppointed *** counsel again has chosen to adopt in its entirety the *pro se* petition” but that “[g]iven the unfortunate remand history,” it would “address the substance of each claim and *** not seek a ruling based on forfeiture.” However, the State’s footnote suggests that Stevens did not comply with Rule 651(c) and that there *were* forfeiture arguments to be made. The State’s decision not to argue forfeiture does not require us to overlook Stevens’s unreasonable assistance.

¶ 84 The State also argues that “[d]efendant’s claim also does not rebut the presumption of reasonable assistance because the underlying claims of ineffective assistance of trial counsel and appellate counsel lack[] merit.” The State, quoting *Kulpin*, 2025 IL App (2d) 240065, ¶ 14, asserts that “ ‘[f]ulfillment of the third obligation of Rule 651(c) does not require postconviction counsel to advance frivolous or spurious claims on defendant’s behalf.’ ” While postconviction counsel need not advance frivolous claims, here, Stevens reviewed the prior petitions and determined that defendant’s claims—including defendant’s claim regarding the admission of his statements—*were* worth pursuing. As the supreme court noted in *Addison* when rejecting a similar argument: “We fail to see how it can be reasonable assistance of counsel for an attorney to identify claims worth pursuing but then fail to shape them into proper form.” *Addison*, 2023 IL 127119, ¶ 26.

¶ 85

III. CONCLUSION

¶ 86 For the reasons stated, we agree that the record rebuts Stevens's Rule 651(c) certificate. Accordingly, we reverse the dismissal of the third amended postconviction petition and remand for further proceedings with new appointed counsel.

¶ 87 Reversed and remanded.