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2012 IL App (3d) 110242-U

Order filed September 5, 2012

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IN THE  
APPELLATE COURT OF ILLINOIS  
THIRD DISTRICT

A.D., 2012

THE PEOPLE OF THE STATE OF ILLINOIS,	)	Appeal from the Circuit Court
	)	of the 13th Judicial Circuit,
Plaintiff-Appellee,	)	La Salle County, Illinois,
	)	
v.	)	Appeal No. 3-11-0242
	)	Circuit No. 03-CF-366
	)	
RUBEN CASTELLANOS,	)	Honorable
	)	Cynthia M. Raccuglia,
Defendant-Appellant.	)	Judge, Presiding.

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JUSTICE CARTER delivered the judgment of the court.  
Justices Holdridge and Wright concurred in the judgment.

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**ORDER**

¶ 1 *Held:* Postconviction counsel complied with the requirements of Illinois Supreme Court Rule 651(c).

¶ 2 Defendant, Ruben Castellanos, was convicted of aggravated criminal sexual abuse (720 ILCS 5/12-16(d) (West 2004)) and aggravated discharge of a firearm (720 ILCS 5/24-1.2(a)(2) (West 2004)). Thereafter, defendant filed a postconviction petition, which was dismissed by the trial court at the second stage. Defendant appeals, arguing that postconviction counsel failed to

comply with Illinois Supreme Court Rule 651(c) (eff. Dec. 1, 1984). We affirm.

¶ 3

### FACTS

¶ 4 Following two separate trials, defendant was convicted of aggravated criminal sexual abuse (720 ILCS 5/12-16(d) (West 2004)) and aggravated discharge of a firearm (720 ILCS 5/24-1.2(a)(2) (West 2004)). The circuit court sentenced defendant to seven years' imprisonment for aggravated criminal sexual abuse and a consecutive term of four years' imprisonment for aggravated discharge of a firearm. Defendant's conviction was affirmed on appeal. *People v. Castellanos*, No. 3-06-0357 (2007) (unpublished order under Supreme Court Rule 23).

¶ 5 On September 21, 2010, defendant filed a *pro se* postconviction petition. The petition contained numerous allegations, many of which had been raised in defendant's direct appeal. The petition also alleged ineffective assistance of trial counsel for, among other things, failing to interview and call favorable witnesses. The public defender was appointed as postconviction counsel and filed a Rule 651(c) certificate on March 31, 2010. The certificate stated that counsel had consulted with defendant, had examined the trial record, and had made any amendments to defendant's petition that were necessary for an adequate presentation of defendant's claims.

¶ 6 The State filed a motion to dismiss defendant's postconviction petition. At a hearing on the motion, postconviction counsel stated that he had reviewed the entire trial transcript as well as the appellate court decision, and he had interviewed defendant. Counsel stated that he did not make any changes to defendant's *pro se* postconviction petition because he did not think they would have been helpful to defendant. Counsel noted that he discussed with defendant his allegation that trial counsel failed to contact certain witnesses. During his conversations with defendant, counsel ascertained that the witnesses would not have helped defendant during the

trials. Therefore, counsel did not contact the witnesses himself.

¶ 7 At the conclusion of the hearing, the court granted the State's motion to dismiss. The court noted that it was dismissing the petition on the merits, even though the petition could have been dismissed as untimely. Defendant appeals.

¶ 8 ANALYSIS

¶ 9 Defendant argues that postconviction counsel did not provide a reasonable level of assistance because he failed to comply with Rule 651(c). Specifically, defendant claims that counsel failed to: (1) amend defendant's petition; (2) interview witnesses and obtain affidavits or evidentiary support; and (3) argue any legally cognizable reason for the court to proceed with defendant's motion.

¶ 10 Because there is no constitutional right to counsel during proceedings under the Post-Conviction Hearing Act (725 ILCS 5/122-1 *et seq.* (West 2010)), a defendant who files a petition for postconviction relief is entitled only to a reasonable level of assistance from counsel. *People v. Pendleton*, 223 Ill. 2d 458 (2006). Rule 651(c) requires postconviction counsel to: (1) consult with petitioner either by mail or in person; (2) examine the record of the proceedings at the trial; and (3) make 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. Dec. 1, 1984). The filing of a certificate by counsel that states he has complied with the requirements of Rule 651(c) creates a rebuttable presumption that he has provided reasonable assistance. *People v. Profit*, 2012 IL App (1st) 101307.

¶ 11 Here, counsel filed a Rule 651(c) certificate, thus triggering the presumption of compliance with the rule. Defendant has not rebutted that presumption. Further, we note that the

certificate was not the only indication in the record that counsel complied with Rule 651(c). Counsel stated on the record that he had consulted with defendant, examined the entire trial transcript, and reviewed defendant's *pro se* petition. While defendant is correct in noting that counsel did not amend his petition, counsel stated that he could not make any changes that would have been helpful to defendant. Therefore, both the certificate and counsel's statements on the record indicate that he complied with the three requirements of Rule 651(c). Defendant has failed to show that he was prejudiced by any of counsel's alleged omissions. Thus, we conclude that counsel provided a reasonable level of assistance.

¶ 12

#### CONCLUSION

¶ 13 The judgment of the circuit court of La Salle County is affirmed.

¶ 14 Affirmed.