

No. 1-12-0904

**NOTICE:** This order was filed under Supreme Court Rule 23 and may not be cited as precedent by any party except in the limited circumstances allowed under Rule 23(e)(1).

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IN THE  
APPELLATE COURT OF ILLINOIS  
FIRST JUDICIAL DISTRICT

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THE PEOPLE OF THE STATE OF ILLINOIS,	)	Appeal from the
	)	Circuit Court of
Plaintiff-Appellee,	)	Cook County.
	)	
v.	)	No. 94 CR 19528
	)	
CHARLES BRYANT,	)	Honorable
	)	Steven J. Goebel,
Defendant-Appellant.	)	Judge Presiding.

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JUSTICE EPSTEIN delivered the judgment of the court.  
Presiding Justice Fitzgerald Smith and Justice Howse concurred in the judgment.

**O R D E R**

¶ 1 **Held:** Defendant cannot establish that he was denied reasonable assistance of postconviction counsel when he has failed to rebut the presumption of compliance with Supreme Court Rule 651(c) triggered by the filing of a Rule 651(c) certificate.

¶ 2 Defendant Charles Bryant appeals from the second stage dismissal of his petition for relief under the Post-Conviction Hearing Act (Act) (725 ILCS 5/122-1 *et seq.* (West 2000)). On appeal, defendant contends that postconviction counsel provided unreasonable assistance in

violation of Supreme Court Rule 651(c) (eff. Dec. 1, 1984), when, *inter alia*, counsel failed to ensure that the circuit court complied with this court's mandate to admonish defendant pursuant to *People v. Shellstrom*, 216 Ill. 2d 45 (2005). We affirm.

¶ 3 Following a bench trial in 1996, defendant was convicted of eight counts of aggravated criminal sexual assault and sentenced to an aggregate prison term of 59 years. This judgment was affirmed on direct appeal. See *People v. Bryant*, No. 1-96-3381 (1997) (unpublished order under Supreme Court Rule 23).

¶ 4 In 2001, defendant filed a *pro se* "petition of *habeas corpus* for relief of judgment" pursuant to section 2-1401(f) of the Code of Civil Procedure (735 ILCS 5/2-1401(f) (West 2000)). The circuit court recharacterized the document as a postconviction petition and appointed counsel. Postconviction counsel filed an amended supplemental petition for postconviction relief and a certificate pursuant to Supreme Court Rule 651(c) (eff. Dec. 1, 1984). The circuit court subsequently granted the State's motion to dismiss.

¶ 5 On appeal, this court determined that defendant had not been admonished, pursuant to *People v. Shellstrom* 216 Ill. 2d 45 (2005), prior to the circuit court's recharacterization of the *pro se* petition for relief from judgment into a postconviction petition. Therefore, this court vacated the judgment and remanded "for further proceedings in compliance with *People v. Shellstrom*, 216 Ill. 2d 45, 57 (2005)." See *People v. Bryant*, No. 1-07-0454 (2009) (unpublished order under Supreme Court Rule 23). In other words, this court vacated the judgment of the circuit court and remanded the cause to the circuit court with instructions to give defendant the chance to withdraw his *pro se* pleading, or, in the alternative, to amend the pleading to include whatever additional postconviction claims that defendant believed that he had. *Bryant*, No. 1-07-0454, Order at 3. This court also determined that defendant's claim that he was denied the

reasonable assistance of postconviction counsel was unsupported by the record when the record contained evidence that postconviction counsel filed a certificate pursuant to Supreme Court Rule 651(c), which established that defendant received "a reasonable level of assistance from postconviction counsel." See *Bryant*, No. 1-07-0454, Order at 4.

¶ 6 On remand, the circuit court appointed postconviction counsel and continued the matter. At the next hearing, the State reminded the court that the matter was remanded so that defendant could be admonished pursuant to *Shellstrom*. The circuit court responded that in reading defendant's pleadings, the court "really could not determine what legal basis you were attempting to proceed under and deemed it to your benefit that it be characterized as a postconviction petition. And so now I think that you should withdraw your pleading." Postconviction counsel then stated that under *Shellstrom*, defendant would be advised to consider the "initial document" as a postconviction petition, have the choice to either withdraw or amend the petition, and would need the advice of counsel to decide. Counsel then stated that he believed that the court had given the required admonishments, defendant was aware of the choices, and requested a continuance in order to give defendant "the appropriate legal advice."

¶ 7 At the next hearing, a different public defender appeared on behalf of defendant and indicated that she had not yet spoken with defendant. The State responded that the matter was remanded for *Shellstrom* admonishments, which the court had given, but that a recent supreme court decision called into question whether admonishments were actually necessary.

¶ 8 The matter was then transferred to another courtroom. At a subsequent hearing, the circuit court reiterated the case's procedural posture and determined, based upon the court's review of the transcripts, that defendant had not yet been sufficiently admonished. The court therefore concluded that defendant could either amend or withdraw his postconviction pleading

and asked postconviction counsel what defendant wanted to do. Postconviction counsel indicated that defendant wished to amend his petition. At the next hearing, however, postconviction counsel indicated that no supplemental postconviction petition would be filed. Counsel explained that she did not have anything to file and that, although it was defendant's decision to file an amended postconviction petition, he had nothing to file. Counsel further stated that she had sent defendant a letter three weeks prior telling him that an amendment needed to be filed and that he should contact her if he had any issues he wished to raise. After postconviction counsel indicated that she had not yet spoken to defendant, the court ordered that defendant be "writ in" for the next court date.

¶ 9 Defendant was present in court at the next hearing, and upon questioning from the court indicated that he did not wish to amend his postconviction petition. The court then asked defendant whether he had spoken about the "ramifications" of recharacterization with counsel. When defendant asked what the court meant by ramifications, postconviction counsel responded that she discussed the ramifications with defendant, *i.e.*, the court would rule on what had been filed and defendant could have the opportunity to appeal that decision. Defendant indicated that he understood. Ultimately, the court granted the State's motion to dismiss.

¶ 10 On appeal, defendant raises no substantive issue regarding the dismissal of his petition, but claims that postconviction counsel on remand failed to comply with Rule 651(c) because she did not ensure that the circuit court complied with this court's mandate to admonish defendant pursuant to *Shellstrom* on remand, or adequately advise him as to the ramifications of recharacterizing his petition. Defendant further argues that postconviction counsel ensured that his postconviction petition would be dismissed.

¶ 11 This court reviews an attorney's compliance with a supreme court rule, as well as the dismissal of a postconviction petition on the State's motion, *de novo*. *People v. Profit*, 2012 IL App (1st) 101307, ¶ 17.

¶ 12 The Act requires only a reasonable level of assistance by counsel during postconviction proceedings. *People v. Moore*, 189 Ill. 2d 521, 541 (2000). In order to ensure this reasonable level of assistance, Supreme Court Rule 651(c) (eff. Dec. 1, 1984), requires appointed counsel to: (1) consult with the defendant by mail or in person to determine the defendant's claims of constitutional deprivation; (2) examine the record of the challenged proceedings; and (3) make any amendments that are "necessary" to the petition previously filed by the *pro se* defendant to present the defendant's claims to the court. The purpose of the rule is to ensure that postconviction counsel shapes a defendant's allegations into a proper legal form and presents them to the court. *Profit*, 2012 IL App (1st) 101307, ¶ 18. An attorney's substantial compliance with the rule is sufficient. *Id.*

¶ 13 When a Rule 651(c) certificate is filed, the presumption exists that the defendant received the representation that the rule requires him to receive during second-stage proceedings under the Act. *People v. Rossi*, 387 Ill. App. 3d 1054, 1060 (2009). A defendant has the burden to overcome this presumption by demonstrating that postconviction counsel failed to substantially comply with the duties required by Rule 651(c). *Profit*, 2012 IL App (1st) 101307, ¶ 19.

¶ 14 Here, the record reveals that postconviction counsel filed an amended supplemental postconviction petition and a Rule 651(c) certificate, thus creating a presumption that defendant received the representation required by the rule at the second stage of proceedings. *Rossi*, 387 Ill. App. 3d at 1060. However, defendant contends that he has rebutted the presumption of substantial compliance because counsel on remand failed to ensure that the circuit court

complied with this court's mandate and to adequately explain to him the ramifications of recharacterizing his petition. Specifically, defendant contends that postconviction counsel should have ensured that he was admonished, pursuant to *People v. Shellstrom*, 216 Ill. 2d 45 (2005), that the court planned to recharacterize the pleading, warned that this recharacterization meant that any subsequent postconviction petitions would be subject to the restrictions on successive postconviction petitions, and given an opportunity to withdraw or amend the pleading.

¶ 15 Before reaching the merits of defendant's contention on appeal, we must address the State's argument that any error in admonishing defendant was rectified by the appointment of postconviction counsel. The State relies on our supreme court's holding in *People v. Stoffel*, 239 Ill. 2d 314, 328, (2010), to argue that because *Shellstrom* admonishments are designed to protect the rights of a *pro se* defendant and to inform him of the limitations surrounding the filing of successive postconviction petitions, such admonishments are not necessary when a *pro se* pleading is recharacterized and counsel is appointed. In other words, the appointment of postconviction counsel provides the same protection for a defendant's rights that would be served by the admonishments. We agree with the State.

¶ 16 In *People v. Stoffel*, 239 Ill. 2d 314, 328 (2010), our supreme court determined that when "a defendant's *pro se* petition is not summarily dismissed but is instead advanced for further review, and counsel is appointed to represent the defendant, *Shellstrom* admonitions are unnecessary." The court explained that *Shellstrom* admonishments are intended to protect the rights of *pro se* defendants and to inform them of the limitations on the filing successive postconviction petitions, that is, the need to amend the initial petition to include all possible postconviction claims. *Stoffel*, 239 Ill. 2d at 328. When postconviction counsel is appointed, that

is the role counsel must perform, as counsel is required to consult with the defendant and make any amendments to the *pro se* petition that are necessary. *Stoffel*, 239 Ill. 2d at 328.

¶ 17 Here, the circuit court recharacterized defendant's *pro se* petition as a postconviction petition and appointed postconviction counsel. Postconviction counsel then filed an amended supplemental petition for postconviction relief. Therefore, because defendant's *pro se* petition was advanced for further review and postconviction counsel was appointed, *Shellstrom* admonishments were not necessary. *Stoffel*, 239 Ill. 2d at 328. In other words, the appointment of counsel effectively cured the circuit court's failure to admonish defendant before recharacterizing the *pro se* pleading. See *Stoffel*, 239 Ill. 2d at 328 (when "a defendant's *pro se* petition is not summarily dismissed but is instead advanced for further review, and counsel is appointed to represent the defendant, *Shellstrom* admonitions are unnecessary"). Accordingly, because postconviction counsel was appointed, the absence of *Shellstrom* admonitions in this case in no way prejudiced defendant. See *Stoffel*, 239 Ill. 2d at 328 ("the concerns raised in *Shellstrom* do not apply when counsel is present").

¶ 18 Although a trial court is generally bound on remand by this court's disposition of questions of law, there is an exception to the "law of the case" doctrine in those instances when, after the lower reviewing court's decision, a higher reviewing court makes a contrary ruling on the same issue. *People v. Watson*, 338 Ill. App. 3d 765, 780 (2003), *aff'd*, 214 Ill. 2d 271 (2005). Here, subsequent to this court's remand of the instant cause for *Shellstrom* admonishments, our supreme court determined that such admonishments were not necessary when a defendant's *pro se* pleading was recharacterized and postconviction counsel was appointed (*Stoffel*, 239 Ill. 2d at 328), and consequently, the circuit court was not bound on remand by our determination that defendant was entitled to such admonishments (see *Watson*, 338 Ill. App. 3d at 780). Therefore,

because *Shellstrom* admonishments were not necessary under the facts of this case, postconviction counsel's failure to ensure that the circuit court admonished defendant on remand cannot be construed as unreasonable assistance of counsel.

¶ 19 We similarly reject defendant's claim that postconviction counsel failed to adequately advise him of the "ramifications" of recharacterizing his petition when postconviction counsel, in response to a question from the circuit court, stated that she discussed the ramifications with defendant, *i.e.*, the court would rule on what had been filed and defendant could have the opportunity to appeal that decision. Contrary to defendant's assertion that postconviction counsel was required to make him aware of the need to amend the initial *pro se* petition to include all possible postconviction claims, *i.e.*, give him a modified version of the *Shellstrom* admonishments, the appointment of postconviction counsel serves the same function as the admonishments. As our supreme court explained in *Stoffel*, the purpose of the *Shellstrom* admonishments is to, *inter alia*, inform defendants of the need to amend the initial petition to include all possible postconviction claims and when postconviction counsel is appointed, counsel must consult with the defendant and make any amendments to the *pro se* petition that are necessary in order to present the defendant's claims to the court. See *Stoffel*, 239 Ill. 2d at 328 (the absence of admonishments under *Shellstrom* "in no way prejudices the defendant" when the petition advances to second-stage proceedings and postconviction counsel is appointed); *People v. Thomas*, 2013 IL App (2d) 120646, ¶ 6 (the purpose of Rule 651(c) is to ensure that counsel shapes the defendant's claims into proper legal form and presents them to the court).

¶ 20 Defendant finally contends that postconviction counsel's actions on remand guaranteed that the State's motion to dismiss would be granted a second time because counsel chose to stand on the previously filed petitions without any further amendment. He further argues that if

counsel did not have meritorious arguments or amendments to make to the prior filings, counsel was required to file a motion to withdraw pursuant to *People v. Greer*, 212 Ill. 2d 192 (2004), and her failure to do so constituted unreasonable assistance.

¶ 21 Initially, we question defendant's assertion that counsel could have offered further amendments, as the record reveals that postconviction counsel had already filed an amended supplemental petition and a Rule 651(c) certificate. In any event, we reject defendant's argument that he was denied the reasonable assistance of postconviction counsel by counsel's decision to stand on defendant's *pro se* postconviction petition and the amended supplemental petition as he fails to identify any additional amendments that could have been made.

¶ 22 Contrary to defendant's assertion, postconviction counsel was not required to file a motion to withdraw. In *Greer*, our supreme court stated that, although Rule 651(c) requires postconviction counsel to make any amendments necessary to a *pro se* petition, in those cases where "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." *Greer*, 212 Ill. 2d at 205. Here, however, counsel determined that defendant had meritorious claims that could be raised and raised them in the amended supplemental petition. See *Greer*, 212 Ill. 2d at 205 (an attorney who determines that a defendant's claims are meritless cannot in good faith file an amended petition on his behalf).

¶ 23 This court is similarly unpersuaded by defendant's reliance on *People v. Shortridge*, 2012 IL App (4th) 100663, ¶¶ 14-15, as in that case, the court determined that postconviction counsel should have filed a motion to withdraw from his representation of defendant rather than conceding that the defendant's claims were not viable. Here, on the other hand, defendant's

postconviction counsel filed an amended supplemental petition and a Rule 651(c) certificate and there is no indication that counsel ever characterized defendant's claims as nonmeritorious.

¶ 24 In the case at bar, postconviction counsel filed a Rule 651(c) certificate, thus triggering the presumption that defendant received the representation that the rule requires him to receive during second-stage proceedings under the Act. *Rossi*, 387 Ill. App. 3d at 1060. As discussed above, defendant has failed to rebut this presumption (see *Profit*, 2012 IL App (1st) 101307, ¶ 19), and consequently, defendant has failed to establish that he was denied the reasonable assistance of postconviction counsel (see *Moore*, 189 Ill. 2d at 541).

¶ 25 Accordingly, the judgment of the circuit court of Cook County is affirmed.

¶ 26 Affirmed.