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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. 03 CR 7731
	)	
MASHAUN LAWS,	)	Honorable
	)	Michele M. Simmons,
Defendant-Appellant.	)	Judge Presiding.

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JUSTICE PIERCE delivered the judgment of the court.  
Presiding Justice Harris and Justice Liu concurred in the judgment.

**O R D E R**

¶ 1 *Held:* Defendant has not rebutted the presumption of reasonable assistance of post-conviction counsel created by his appointed counsel's filing of a Rule 651(c) certificate; the record demonstrates counsel's compliance with the rule's requirements, even though counsel himself was unable to make court appearances.

¶ 2 Defendant Mashaun Laws appeals from the dismissal of his *pro se* petition at the second stage of proceedings under the Post-Conviction Hearing Act (the Act) (725 ILCS 5/122-1 *et seq.* (West 2008)). On appeal, defendant contends his case should be remanded because his post-

conviction counsel did not provide the reasonable assistance required by Supreme Court Rule 651(c) (eff. Dec. 1, 1984). Defendant asserts that although the assistant public defender assigned to his case filed a Rule 651(c) certificate attesting to his work, that attorney did not communicate with him throughout the proceedings and did not appear in court on his behalf during the final two years of his case. Defendant further argues he was represented by other public defenders who were unfamiliar with his case and who did not file their own certificates pursuant to Rule 651(c). For the reasons set forth below, we affirm the dismissal of defendant's petition.

¶ 3 In 2004, defendant pleaded guilty to the first degree murder of Kelly Merritt, with whom he had a child, in exchange for a sentence of 45 years in prison. Defendant filed a motion to vacate his plea, which the trial court granted. Following a jury trial in 2006, defendant was convicted of first degree murder. Defendant admitted shooting Merritt and argued it was self-defense. The evidence established that Merritt had six gunshot wounds and that seven bullet casings were recovered from the scene. The court sentenced defendant to 30 years for the murder and an additional 25 years based on the jury's determination that defendant personally discharged the firearm that caused the victim's death, for a total sentence of 55 years in prison.

¶ 4 On direct appeal, defendant raised six arguments involving alleged errors by the trial court and prosecutors, including, *inter alia*, the failure to define reasonable doubt for the jury, the admission into evidence of a video tape showing Merritt's wounds, and the prosecution's remarks during rebuttal closing argument. This court affirmed defendant's conviction and sentence. *People v. Laws*, No. 1-06-0471 (2008) (unpublished order under Supreme Court Rule 23).

¶ 5 On December 12, 2008, defendant filed a *pro se* post-conviction petition asserting ineffectiveness of his appellate counsel for failing to raise in his direct appeal four claims of the

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deficient representation by his trial attorney. Defendant claimed that his trial counsel failed to object to testimony that he was overheard four months before the crime telling Merritt, "I'll kill you." He also claimed he was prejudiced by counsel's failure to object to other alleged hearsay statements, as well as the State's remark in closing argument that defendant pulled the trigger seven times.

¶ 6 On February 20, 2009, defendant's petition was docketed for second-stage proceedings under the Act, and the office of the Cook County Public Defender was appointed as post-conviction counsel. On June 26, 2009, assistant Cook County Public Defender (APD) Lynne Wilson stated she was appearing in court on behalf of APD Henry Hams, who had been assigned to the case but was in a different courtroom. The court entered an order for Hams to receive the trial record.

¶ 7 At the next court date on September 25, 2009, APD Judi Smith appeared on behalf of Hams. The court noted he had received a letter from defendant in prison in which defendant stated he had been informed of Hams' appointment to his case and he wrote to Hams "three or four times requesting a status report but that he has not been informed of the status of his case." The court asked Smith to notify defendant as to the status of his case. Smith said Hams had asked her to request a continuance until December 18.

¶ 8 On December 18, 2009, Hams appeared in court on defendant's behalf, and the following colloquy occurred:

"THE COURT: Mr. Hams, you represent the defendant, correct?"

MR. HAMS: Yes, your Honor.

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THE COURT: Have you spoken with him? He was sending me things frequently.

MR. HAMS: Yes. He sent several letters.

THE COURT: He keeps writing, sending letters. I just want to make sure you are in contact with your client.

MR. HAMS: Yes, I am in contact with my client. I have sent him several letters, and I responded to letters that he sent the Court in regard to – I am getting in contact with me [*sic*]. I have read an eight-volume transcript in regards to his case, and

THE COURT: This was a jury trial. I see the clerk's office tendered you eight volumes September 24th?

MR. HAMS: Yes, your Honor. Initially, he [pled] guilty, and then withdrew his guilty plea –

THE COURT: That's correct.

MR. HAMS: -- and then he was tried before you.

THE COURT: That's correct.

MR. HAMS: I have read the transcript. I have also read his five-count post-conviction petition. So I need an opportunity to talk to him. I anticipate just filing a 651(c) certificate. So I am asking for a March 12 [] date to file my 651(c) certificate."

¶ 9 At the next court date on March 12, 2010, Hams told the court he had spoken to Rivanda Doss, an assistant State's Attorney who had previously appeared in the case, and he was "in the process of an investigation." Hams stated he read the transcript and described the facts of defendant's case. The court noted that defendant wrote letters to the court "quite a bit" and

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passed the case to see if he had any correspondence from defendant to give to Hams. The court stated there were "a few letters in the file," including a letter from defendant dated March 5, 2010. The following exchange occurred after the case was recalled:

"THE COURT: Have [] you seen this letter, counsel?

MR. HAMS: I don't believe I have, Judge. I have February 25th.

THE COURT: He is talking about the lack of communication from [a]ttorney Hams.

MR. HAMS: Okay.

THE COURT: That was the recent letter that he just sent this month. Have you been in contact with your client?

MR. HAMS: The last conversation we had, for the record, was in regard to the 1992 amendment of the Illinois statutes. My client has raised, wants to raise additional arguments after the statutes were improperly modified by the [Illinois Compiled Statutes], which is a common argument. I have to send him case law.

THE COURT: The murder statute?

MR. HAMS: [] The Criminal Code was revised in 1992. We used to have an Illinois Revised Statutes, now we have the compiled statutes, so he says that the statutes, as they exist on his indictment, as it is noted, as it is identified, is improper.

That is a common argument that many criminal defendants raise, which is inappropriate, so I have to send him the appropriate case law informing him that is not a legitimate argument for post-conviction purposes, but I have been in contact with my

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client. I am in the process of evaluating his many claims of constitutional deprivation and I need additional time to review the attorney trial files to resolve my client's claims.

THE COURT: All right. With regards to the post-conviction claims, however, you have reviewed them?

MR. HAMS: [] I have reviewed his post-conviction petition and I am in the process of, like I said, reviewing the law and writing him a letter, in preparation of writing him a letter explaining why those issues are valid or not. But in the process of doing that, I need to review the attorney trial files.

THE COURT: Have you spoken to Mr. Hill [one of two public defenders who represented defendant at trial] about receiving that?

MR. HAMS: No, I have not. My usual procedure would be to request the file through our office, review that file and then afterwards talk to Mr. Hill, if that is necessary.

THE COURT: Mr. Hill and Mr. Tyson [defendant's second public defender at trial].

MR. HAMS: Yes."

¶ 10 The court and Hams discussed the whereabouts of those attorneys, and Hams also noted that a private attorney, Theodore London, also represented defendant in his trial proceedings. The court set the next date for June 2010.

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¶ 11 Hams did not appear in court again on defendant's case.<sup>1</sup> On August 20, 2010, APD Stephanie Foster stated she appeared on behalf of Hams. Foster stated that Hams had been in contact with defendant, whose chief complaint was lack of access to the prison law library. Foster said that Hams requested a November court date "to give his client an opportunity to tell him what witnesses he wants him to speak to, and what issues he wants him to address." The exchange continued:

"THE COURT: At this point I believe we are just waiting for a 651(c) [certificate] to be filed.

MS. WALLS [assistant State's Attorney]: Yes, if Mr. Hams is going to be filing an amended or a supplemental –

THE COURT: I believe that – that's correct. I don't believe a supplemental or an amended [post-conviction petition] has been filed yet.

MS. WALLS: No.

MS. FOSTER: Judge, at this point, his client is indicating that there are several issues that he insist[s] Mr. Hams look at."

¶ 12 The case was continued to November 19, 2010. On that date, APD Maurice Sykes appeared for defendant and stated he was "standing in for Henry Hams, who is the assigned attorney." Sykes stated that Hams requested a February date and needed to obtain a trial file. The court set the case for February 18, 2011, when Sykes again appeared on Hams' behalf. Sykes told the court he had spoken with Hams, who told Sykes he needed to speak with

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<sup>1</sup> The parties state in their briefs that an unrelated criminal complaint was filed against Hams in June 2010 for aggravated battery and resisting arrest. Hams was indicted in August 2010 and acquitted in November 2012 after a jury trial.

defendant "one last time to confirm the [651(c)], or whether or not he [would] file a supplemental petition." The case was continued to March 25, and again to June 17.

¶ 13 On June 17, 2011, APD Wilson submitted to the court a Rule 651(c) certificate that had been prepared and signed by Hams. In the certificate, Hams stated he had consulted with defendant "by letter and by telephone on numerous occasions to ascertain his contentions of deprivations of constitutional rights." Hams also attested he had reviewed the transcript of defendant's trial and the decision in his direct appeal and discussed the case with Hill, one of defendant's trial attorneys. Hams stated he had examined defendant's *pro se* post-conviction filing and found that it adequately presented defendant's claims.

¶ 14 On September 16, 2011, Wilson again appeared on Hams' behalf, and the court granted the State leave to file a motion to dismiss defendant's *pro se* petition. Wilson addressed the court:

"MS. WILSON: Your Honor, can we set this for a month status? Mr. Ham[s] will not be in court but he is filing all of 651(c) [*sic*]. He's still researching and doing the case as to the actual argument. I'm not sure who will be presenting it, me or someone else, so may I have a three-month date in case he wants to respond, and to see who can handle the case – I mean who will be arguing the case?

THE COURT: Arguing the State's motion.

MS. WILSON: Yes.

THE COURT: Three months isn't enough time to get ready for a motion to dismiss?

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MS. WILSON: It's Mr. Hams' case, your Honor, and I really can't honestly say. I will let you know that.

THE COURT: No. Give me a shorter date for status or take the three months for me to hear the motion to dismiss.

MS. WILSON: Okay.

THE COURT: Do you know what[] his status is now?

MS. WILSON: I honestly don't know. I know he is still not in the courtroom.

THE COURT: Are his cases being re-assigned? I can't hold them forever.

MS. WILSON: His cases are being reassigned. He is doing the paperwork, and it's my understanding that someone else actually comes in to actually do argument."

¶ 15 In December 2011, APD Foster appeared on Hams' behalf and stated that Hams wished to respond to the court's request that Hams file a response to the State's motion to dismiss defendant's petition. Foster told the court that Hams sought time to "speak to his client and file a response." The court set a date of February 10, 2012, for defendant's response to be filed. On that date, APD Jeffrey Walker appeared "standing in for" Hams. Walker told the court that he spoke to Hams the previous day and that Hams would prepare a memo for the attorney who would argue at the motion hearing. At the next court date, APD Sykes again appeared for defendant. Sykes said Hams was the attorney of record and that Hams had given him a response to the State's motion to dismiss. The court said the State's motion would be argued on the next court date and that someone from the public defender's office should be prepared to participate.

¶ 16 On June 29, 2012, a hearing on the State's motion to dismiss defendant's *pro se* petition was held, with APD Lester Finkle arguing on behalf of defendant. The circuit court granted the

State's motion to dismiss the petition. The judge noted she was familiar with the case because she had presided at defendant's trial and sentencing and had reviewed the order of this court disposing of his direct appeal. The court held defendant had not shown his trial counsel's performance was deficient. Defendant now appeals from that ruling.

¶ 17 On appeal, defendant contends this case should be remanded because he did not receive the reasonable assistance of post-conviction counsel. Defendant's position is meritless.

¶ 18 At the second stage of post-conviction proceedings, appointment of counsel is a wholly statutory right (725 ILCS 5/122-4 (West 2006)), as opposed to a constitutional right, and under the Act, a defendant is only entitled to a reasonable level of assistance. *People v. Suarez*, 224 Ill. 2d 37, 42 (2007). To ensure this, Supreme Court Rule 651(c) imposes three duties on appointed post-conviction counsel.

¶ 19 Rule 651(c) provides:

"The record filed [in the appellate court] shall contain a showing, which may be made by the certificate of petitioner's attorney, that the attorney [1] has consulted with petitioner by phone, mail, electronic means or in person to ascertain his or her contentions of deprivation of constitutional rights, [2] has examined the record of the proceedings at the trial, and [3] 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. Dec. 1, 1984). See also *People v. Perkins*, 229 Ill. 2d 34, 42 (2007).

¶ 20 The filing of a Rule 651(c) certificate creates a presumption that post-conviction counsel provided reasonable assistance, and substantial compliance with Rule 651(c) is sufficient.

*People v. Profit*, 2012 IL App (1st) 101307, ¶ 19. That presumption of compliance can be rebutted by the record. *People v. Lander*, 215 Ill. 2d 577, 584 (2005). Our review of counsel's compliance with a supreme court rule, as well as the dismissal of a post-conviction petition without an evidentiary hearing, is *de novo*. *Profit*, 2012 IL App (1st) at ¶ 17.

¶ 21 In the instant case, APD Hams filed a Rule 651(c) certificate, and therefore, defendant has the burden of overcoming the presumption of reasonable assistance by demonstrating Hams failed to substantially comply with the duties set out in Rule 651(c). *Id.* at ¶ 19. Defendant does not challenge post-conviction counsel's compliance with the second and third duties set out in Rule 651(c). Instead, defendant contends that the record rebuts the representation by APD Hams in his Rule 651(c) certificate that he "consulted" with defendant "by letter and telephone on numerous occasions to ascertain his contentions of deprivations of constitutional rights." Defendant primarily directs attention to matters in 2009 before APD Hams filed his certificate in June 2011.

¶ 22 The consultation duty under Rule 651(c) can be satisfied in one conversation between attorney and defendant. *People v. Turner*, 187 Ill. 2d 406, 410-11 (1999). In *Turner*, the supreme court rejected the defendant's argument that his post-conviction counsel provided inadequate representation because they met only once in a two-year period. *Id.* The court held: "[T]here is no reason *as a matter of law* why this [consultation requirement] cannot be accomplished in one meeting with defendant." (Emphasis added.) *Id.* at 411.

¶ 23 The record confirms that APD Hams satisfied the consultation requirement. When Hams appeared in court in December 2009, the court advised him that defendant had been sending letters to the court revealing that he was not in contact with Hams. Hams told the court that he had sent defendant several letters and responded to the letters that defendant sent to the court. At the next court date on March 12, 2010, the court asked Hams if he had been in contact with defendant. In response, Hams described a conversation he and defendant had regarding defendant's proposed contention based on the 1992 version of an Illinois statute. Hams told the court he was working on a letter to defendant explaining why defendant's assertions were valid or invalid.

¶ 24 Furthermore, the instant case falls within the ambit of *Turner* that only one conversation would fulfill the consultation requirement. Under Rule 651(c), post-conviction counsel is only obligated to consider the allegations that are actually presented in the defendant's *pro se* petition. *People v. Pendleton*, 223 Ill. 2d 458, 472 (2006); see also *People v. Jennings*, 345 Ill. App. 3d 265, 274 (2003) (counsel is not required to explore, investigate and formulate claims that were not included in petition). The purpose of post-conviction counsel at the second stage of proceedings is to support the *pro se* allegations with the law, the applicable facts and any possible further information, such as an affidavit. *People v. Thompson*, 383 Ill. App. 3d 924, 931-32 (2008) (counsel is charged with shaping the petitioner's complaints into the proper legal form and presenting those complaints to the court). In turn, post-conviction counsel's consultation duty is necessarily based on the content of the defendant's allegations. Here, all of defendant's *pro se* allegations derived from the trial record and claimed his trial counsel was ineffective for failing to object to or eliciting certain testimony that defendant characterized as

hearsay and failing to object to certain closing arguments by the State that defendant characterized as improper. Post-conviction counsel can evaluate or amend these allegations as a matter of law without further facts, evidence or other information from defendant. Notably, defendant does not contest APD Hams' Rule 651(c) certificate which confirmed as follows:

"2. I have obtained, examined and photocopied the Report of Proceedings and the Common Law record of the trial, the trial attorney file and the Illinois Appellate Court decision in the instant case. I have spoken with trial counsel Kendall Hill on several occasions regarding the allegations raised in [defendant's *pro se* petition].

3. I have examined [defendant's *pro se* petition] and it adequately presents his claims of deprivations of constitutional rights, thus, there is nothing that can be added by an amended or additional supplemental petition."

Because all of defendant's *pro se* allegations in his post-conviction petition are based on the trial record and counsel can evaluate them as a matter of law, the holding of *Turner* that one consultation can be enough applies here.

¶ 25 Even assuming more than one consultation was needed, the record demonstrates that APD Hams, as he certified, had multiple communications with defendant and exceeded the scope of his required review. Contrary to defendant's contention that the record displays a "lack of communication" with Hams, the portions of the record set out above indicate that Hams was in contact with defendant throughout the proceedings, consulted with defendant on more than one occasion, obtained and examined the trial record, and considered the merit of defendant's

potential legal arguments. We note that defendant's complaints of a lack of communication with counsel were made before Hams appeared in court and informed the court of his communications with defendant and also before Hams filed his Rule 651(c) certificate creating the presumption of compliance.

¶ 26 Specifically, the record establishes that at Hams' first court appearance on December 18, 2009, he assured the court he was in contact with defendant. At the next court date, Hams described to the court a conversation that he and defendant had about an issue defendant wished to raise involving the 1992 Illinois statutes. It is undisputed that Hams did not appear in court from March 12, 2010, to the conclusion of the proceedings on June 29, 2012. Hams apparently was unable to make court appearances during the pendency of his own criminal proceedings which began in June 2010, a circumstance that the court and Hams' substitute counsel acknowledged on the record at several points. Nevertheless, from June 2010 until June 2012, when the court dismissed the petition, the various public defenders who appeared in Hams' stead repeatedly noted that Hams continued to be assigned to defendant's case and described for the court the work being done by Hams. On November 19, 2010, APD Sykes said that Hams requested a date and needed to obtain a trial file. At the next date, Sykes indicated he had again conferred with Hams about the case's status. Hams' Rule 651(c) certificate was subsequently filed in June 2011, and in September 2011, APD Wilson indicated Hams continued to research and prepare the argument on defendant's case. On June 1, 2012, Hams filed a response to the State's motion to dismiss defendant's petition.

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¶ 27 Next, defendant asserts that APD Hams' ability to provide reasonable assistance was impacted by his repeated absences from court. Defendant cites no relevant authority for this proposition.

¶ 28 None of the requirements set out in Rule 651(c) includes a counsel's appearance in court. We categorically reject defendant's attempts to add language to Rule 651(c) for the purpose of imposing further conditions on post-conviction counsel that neither our supreme court's rule, nor any decision, requires, such as a specific counsel's presence in court. We recognize an unusual circumstance in the present case apparently prevented APD Hams from being in the courtroom, but many other situations, such as illness or a death in the family, can trigger the need for the appearance of other counsel. Moreover, the Office of the Public Defender, not APD Hams personally, was appointed to represent defendant during these proceedings. See *People v. Benford*, 31 Ill. App. 3d 892, 895 (1975). The record shows that APD Hams was actively engaged in defendant's case from the time he was assigned to the case to the time he filed a written response to the State's motion to dismiss. Rule 651(c) does not pertain to the decisions within the Office of the Public Defender as to how it chooses to handle a case.

¶ 29 Defendant, in support of his position, relies on *Herring v. New York*, 422 U.S. 863, 865 (1975), which involved the denial of the assistance of counsel guaranteed by the sixth amendment and invalidated a state statute that permitted a judge in a bench trial to deny counsel the opportunity to offer a summation of the evidence. The United States Supreme Court reversed the defendant's conviction, holding that counsel could not be deprived of the right to oral argument. *Id.* at 865.

¶ 30 We reject defendant's attempt to change the standard that applies to post-conviction counsel. Quite simply, defendant's argument that constitutional protections under the sixth amendment should apply is fundamentally flawed because the duties of post-conviction counsel are created by statute, and the statutory duties are judged under Rule 651(c). Here, the issue involves reasonable assistance of post-conviction counsel, which differs from the constitutional protections of counsel afforded by the sixth amendment. In stark contrast to *Herring*, defendant was not deprived of the ability to present argument, because the lengthy record indicates that defendant was represented by an assistant public defender at every court date in the record. Just as a defendant does not have the right to choose his appointed counsel (*People v. West*, 137 Ill. 2d 558, 588 (1990)), defendant here was not deprived of counsel simply because the attorney initially assigned to his case could not appear in court, when the record demonstrates that other assistant public defenders were handling defendant's case.

¶ 31 Defendant's final contention is that he was deprived of reasonable representation because even though Hams filed a Rule 651(c) certificate, it was also incumbent upon APD Finkle, who represented him at the dismissal hearing, to file his own certificate. Defendant again attempts to graft an additional requirement onto the duties of post-conviction counsel as set out in Rule 651(c).

¶ 32 The rule does not require the filing of multiple certificates. In arguing that attorney Finkle was bound by the requirements of Rule 651(c) along with Hams, defendant relies on *People v. Ritchie*, 258 Ill. App. 3d 164 (1994). *Ritchie* involved the requirement of Supreme Court Rule 604(d) (eff. Feb. 6, 2013) that when a defendant wants to withdraw a guilty plea, the attorney must file a certificate stating that he has consulted with the defendant, examined the

court file and made any necessary amendments to the defendant's motion necessary to adequately present any defects in the plea proceedings. *Id.* at 166. *Ritchie* noted that strict compliance with Rule 604(d) was required (*People v. Janes*, 158 Ill. 2d 27, 33 (1994)), and that the defendant's counsel did not strictly comply with Rule 604(d) because the attorney who represented the defendant at the hearing on the motion to withdraw his plea did not file a Rule 604(d) certificate. *Id.* The court held that previous counsel's affidavit that he met the consultation requirement of the rule did not meet the requirements of a Rule 604(d) certificate and, moreover, the attestations of prior counsel could not be imputed to the new attorney to excuse the new attorney's failure to file her own Rule 604(d) certificate. *Id.* at 166-67.

¶ 33 Aside from the fact that *Ritchie* involves Rule 604(d), as opposed to Rule 651(c), which is at issue here, *Ritchie* also is distinguishable because there, no acceptable Rule 604(d) certificate was filed at all. Here, in contrast, Hams filed a certificate that met the requirements of Rule 651(c). Defendant does not direct this court to any authority that the attorney who files a Rule 651(c) certificate must be the only attorney who has represented the defendant in court, nor does defendant provide case law holding that an attorney who appears at a dismissal hearing or other court proceeding at the second stage of post-conviction review must file his or her own certificate when a certificate has already been filed by the post-conviction counsel who was assigned the case, consulted with defendant, examined the trial records, including the trial attorney's file, spoke several times with the trial attorney about defendant's *pro se* petition, examined the petition, and later filed the written motion opposing the State's motion to dismiss defendant's petition.

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¶ 34 For all of the foregoing reasons, defendant has not rebutted the presumption of reasonable assistance created by APD Hams' filing of a Rule 651(c) certificate. We affirm the circuit court's dismissal of defendant's post-conviction petition.

¶ 35 Affirmed.