

NOTICE

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2016 IL App (4th) 150269-U
NO. 4-15-0269

FILED
August 17, 2016
Carla Bender
4th District Appellate
Court, IL

IN THE APPELLATE COURT
OF ILLINOIS
FOURTH DISTRICT

THE PEOPLE OF THE STATE OF ILLINOIS,)	Appeal from
Plaintiff-Appellee,)	Circuit Court of
v.)	McLean County
KEIAHTY K. JONES,)	No. 08CF401
Defendant-Appellant.)	
)	Honorable
)	Charles G. Reynard,
)	Judge Presiding.

PRESIDING JUSTICE KNECHT delivered the judgment of the court.
Justices Harris and Pope concurred in the judgment.

ORDER

¶ 1 *Held:* Appointed counsel under the Post-Conviction Hearing Act failed to provide reasonable assistance to defendant, as required by Illinois Supreme Court Rule 651(c), (eff. Apr. 26, 2012) because counsel refused to pursue defendant's *pro se* claims on legally incorrect grounds.

¶ 2 In December 2011, defendant, Keiahty K. Jones, filed a *pro se* petition under the Post-Conviction Hearing Act (Act) (725 ILCS 5/122-1 to 122-7 (West 2010)). The trial court appointed counsel, who determined defendant's claims were barred from postconviction review and filed an amended postconviction petition. The State moved to dismiss the amended petition, and the court granted the motion.

¶ 3 Defendant appeals. He argues he was denied reasonable assistance of counsel, as appointed counsel misunderstood the Act and rejected his *pro se* claims based on that

misunderstanding. We agree and reverse and remand with directions.

¶ 4

I. BACKGROUND

¶ 5 In August 2008, following a jury trial, defendant was convicted of three counts of aggravated battery with a firearm (720 ILCS 5/12-4.2 (West 2008)) involving three different victims, Thysha Jenkins, Mindy Robbins, and Dcamron King. At trial, the following evidence was submitted:

¶ 6 Multiple incidents related to the shooting occurred on April 6, 2008. The first occurred in a parking lot on Market Street, near Pop's Grocery in Bloomington, Illinois. Nadia King, Dcamron King, and Kenny King were riding in a car when Eric Clark-Phifer, Nadia's cousin, flagged them down to stop. After exiting the car, Dcamron punched an individual referred to as "Little Mo," knocking him unconscious. Dcamron left the scene of the fight with his sister, Nadia. Nadia then drove Dcamron and a friend on an errand. Nadia returned home to Evergreen Apartments in Bloomington.

¶ 7 Nadia testified at trial that later that day, around 4 or 5 p.m., she was outside her family's apartment when she saw three men near the back window. Nadia identified these men as Clark-Phifer, "Little Mo", and defendant. Nadia ran through the apartment and exited the back door. She began arguing with "Little Mo" as the three walked toward the parking lot. Nadia warned her brother would soon return. "Little Mo" retrieved a broom handle from the back of a truck and pointed it at Nadia. Nadia's mother, Thysha Jenkins, approached and took Nadia inside the apartment. The three men left in a white car, which defendant drove.

¶ 8 According to Nadia, about 30 to 40 minutes later, the white car returned. Little Mo was not in the car. Another car full of passengers parked down the street. Defendant was in

the white car. He exited the car and stood by the door. Eddie Spice exited the car, walked to the trunk, and pulled out a gun. Clark-Phifer exited the car and stood by Spice's side. Nadia testified she was almost "face-up" with them. Spice began shooting toward the porch. When Spice stopped shooting, he turned and walked away.

¶ 9 Jenkins testified she was inside her apartment at 4:30 p.m. on April 6, 2008, when she saw three men walk past her window. Jenkins identified the men as her nephew Clark-Phifer, "Little Mo", and defendant. According to Jenkins, defendant wore a multicolored Hoodie. Jenkins watched the men through the window as they walked toward where a white car was parked. Jenkins saw Nadia grab a vase and run to the back door. Jenkins followed Nadia.

¶ 10 Paul Bridges, who lived across from the Evergreen Apartments, testified on April 6, 2008, he observed four males exit a white four-door car parked near his home. The men walked toward the complex. Bridges observed a scuffle involving a teenage girl and a teenage boy. The boy took a broom handle from Bridges's truck and pointed it at the girl. The girl stated, "Wait until my brother gets here." A woman arrived and broke up the fight. The men returned to the white car and left. Bridges later observed 20 to 30 people arrive at the apartment complex. They met with the girl and the woman.

¶ 11 According to Bridges, 30 to 45 minutes later, a white car came down the street and parked. The crowd moved toward the white car. Four men exited the car. One man, who was wearing a black tank top, walked to the trunk of the car and pulled out a black pump-action shotgun. The man fired once into the crowd and once into the air over the crowd. People fled. The men returned to the car and drove away. Ten minutes later, the police arrived. Bridges later traveled to the intersection of Morris Avenue and Locust Street, where the police had a male in

custody. That male was wearing a black tank top. Bridges identified him as the shooter.

¶ 12 On cross-examination, Bridges testified he saw another car driving around the area. Passengers in the car yelled at the crowd. One man stuck his hand out the window and, with his hand, made a "pistol" sign in the air. Bridges could not identify defendant from either the initial fight involving the broom handle or the shooting.

¶ 13 Nicole Bruno, a police officer with the Normal police department, testified she responded to a "shots fired" call at a location near the intersection of Forrest Street and Western Avenue in Bloomington. At the scene, Robbins approached, saying she had been hit in the shooting. Officer Bruno observed a welt on Robbin's left side. On cross-examination, Officer Bruno testified she could not confirm defendant was at the scene when the shooting occurred. No one with whom she spoke on April 6, 2008, mentioned defendant's name.

¶ 14 Nikolai Jones, a Bloomington police officer, responded to the scene at approximately 5 p.m. He collected two shotgun shells. After Jenkins composed herself, she spoke to Officer Jones. In her description of the incident, Jenkins did not identify defendant as being present.

¶ 15 On cross-examination, Officer Jones testified Jenkins confirmed two males who exited the white car were the same males that were at her residence earlier that afternoon. When Officer Jones spoke to Jenkins and Nadia about the incident, Officer Jones told the women he needed a description of the shooters. Nadia responded, "Eddie Spice, Eric Clark-Phifer, and [Little Mo] did it." Nadia did not know "Little Mo's" real name. Nadia told Officer Jones she knew those three and someone known as "Lon D" from school. According to Nadia, those four were in the white car. Nadia confirmed Spice fired the shotgun. No one mentioned defendant's

name to Officer Jones.

¶ 16 Mindy Robbins testified. According to Robbins, she was standing in the crowd outside Evergreen Apartments when shots were fired. Robbins was holding her infant son when she was struck by a pellet on her left side. Robbins, who was standing away from the shooter, did not see defendant at the scene.

¶ 17 Kevin Raisbeck, a Bloomington police officer, testified he received a call to respond to the shooting. Less than one minute later, Officer Raisbeck observed a white four-door car on Morris Avenue. Other officers alerted him to the names of those involved as Clark-Phifer, Spice and "Little Mo". No officers mentioned defendant. Officer Raisbeck stopped the white car. Defendant was driving. Spice was in the rear passenger seat, sitting next to Michael McNabb. Clark-Phifer sat in the front passenger seat. Little Mo, known to Officer Raisbeck as Donnell Taylor, was not in the car.

¶ 18 Clark-Phifer testified he did not remember an altercation near Pop's Grocery Store. Clark-Phifer recalled telling his mother and a police officer he witnessed a shooting while he was with Spice and "Little Mo". Clark-Phifer testified a fourth individual was in the white car, but he picked him up after they fled the scene.

¶ 19 Later, the State informed the trial court Clark-Phifer wished for a second opportunity to testify. Clark-Phifer testified he lied during his earlier testimony because he was afraid he and his family were in danger. Clark-Phifer testified he witnessed the fight between Dcamron and "Little Mo". Defendant was not involved in the fight. Clark-Phifer knew of no disagreements between defendant and Dcamron or Dcamron's family. Later, defendant, in his white car, gave "Little Mo" and Clark-Phifer a ride to Evergreen Apartments. Clark-Phifer and

"Little Mo" went to Dcamron's home, seeking revenge. Defendant waited in his car. They left Dcamron's home and defendant dropped off Clark-Phifer and "Little Mo" on Market Street. Clark-Phifer and "Little Mo" met Spice and others for a few minutes. "Little Mo" entered another car. Clark-Phifer and Spice went to a "spot," but they eventually returned to defendant's car with defendant. On Market Street, they met McNabb, who needed a ride to the fight. McNabb sat in the front seat. Clark-Phifer and Spice sat in the back. Clark-Phifer called Dcamron. They went to Evergreen Apartments to fight.

¶ 20 According to Clark-Phifer, he, Spice, and McNabb exited the car. Clark-Phifer did not see defendant leave the car. Clark-Phifer heard shots coming from behind him. Spice was firing a gun. Clark-Phifer did not turn around. He and Spice ran up the street. Spice hid the gun, but Clark-Phifer kept running. They hopped back into the car. Soon, they were pulled over by police.

¶ 21 On cross-examination, Clark-Phifer testified defendant did not say or do anything to cause him to fear testifying. After his testimony, Clark-Phifer was released from custody.

¶ 22 McNabb, 15 years old, testified on April 6, 2008, he asked for a ride home. Spice and Clark-Phifer told McNabb they were going by Evergreen Apartments. Defendant drove the car. They stopped at the intersection of Forrest Street and Western Avenue, near Evergreen Apartments, where a crowd gathered. McNabb received a call from his father and exited the car. McNabb was walking away when Clark-Phifer and Spice said, "pop the trunk." Spice grabbed a gun from the trunk, cocked it, and pointed it at Nadia, who was 10 to 15 feet away. Everyone entered the car a short distance down the street after Spice hid the gun in an alley. Police stopped their car approximately five minutes later. McNabb showed police where the gun was

hidden.

¶ 23 Defendant testified. Defendant was employed and had enlisted in the National Guard. He was scheduled to leave for boot camp in May 2008 and planned to marry Tabatha Veve before he left. Defendant resided in Bloomington with Veve and her two children. At the time of the charged offenses, he owned a white 1996 Chrysler LS. On April 6, 2008, defendant began his day by working in his studio. Around 1 or 2 p.m., defendant left to go to a liquor store. On the way, his engine began to overheat. Defendant returned home and called "Ray," their mechanic. Defendant left a voice mail about his car. Ray returned the call, telling defendant to drop off the car the following day. Around 3:30 or 3:45 p.m., defendant went to his sister's residence on Market Street. He stayed approximately 45 minutes to an hour. Between 4:40 and 5 p.m., defendant went outside and saw some people arguing. Defendant started his car and began driving toward Ray's garage. The engine began to overheat, so he pulled over to the curb. At this time, Clark-Phifer came around the corner of Morris Avenue and West Empire Street. Defendant recognized Clark-Phifer, a friend of someone he knew as "Little Mo." Clark-Phifer asked him for a ride. Defendant initially refused because of his car problems, but then agreed. Two other men, whom defendant did not know, rounded the corner. Clark-Phifer asked defendant to give them a ride as well. Defendant later learned these men were Spice and McNabb. Defendant started driving the car, but he stopped because the engine overheated. A police car drove up and stopped next to the vehicle. The police officer approached and asked defendant to leave the car.

¶ 24 Defendant testified he did not know Nadia or Dcamron, and he saw neither on April 6, 2008. That day, defendant was not near Pop's Grocery. He was not near Evergreen

Apartments during a shooting.

¶ 25 Veve testified she and defendant owned a car that kept overheating. The car needed a new engine. Their mechanic was named Ray. On April 6, 2008, defendant left the house between 3:30 and 4 p.m. to drop off the car at Ray's.

¶ 26 Rene Rolon, whom people called "Ray," identified defendant's car from photos. Rolon testified defendant had brought the car into his garage four to six times for repairs. The car's engine needed replaced, and the car could not be driven more than a couple of blocks without overheating.

¶ 27 Jamie Smith, who lived on North Morris Avenue in Bloomington, testified he saw defendant with his car, which had its hood up, across the street from his house around 4:45 or 5 p.m. on April 6, 2008. Smith did not know defendant before that day. Smith spoke to defendant, asking him if he was okay. Defendant replied his car was overheating. Smith told him if he was still there when Smith returned from the gas station, Smith would give defendant some water.

¶ 28 Later, Smith observed three men running down an alley around the corner from his house. These men ran through his neighbor's yard and attempted to cut through his yard. The men ran east toward Morris Street.

¶ 29 Dale Shadowens, Smith's neighbor on North Morris Avenue in Bloomington, testified he saw a man next to a car with its hood up somewhere between 3 and 4 p.m. on April 6, 2008. Shadowens could not identify the man. Shadowens and Smith drove to a store. When they returned 10 to 15 minutes later, the man and the car were still there. Shadowens believed the man and the car left about 15 to 20 minutes after he and Smith returned from the store.

¶ 30 The jury found defendant guilty on all three counts of aggravated battery with a

firearm but acquitted him on the charges of unlawful use of a weapon and aggravated unlawful use of a weapon. In December 2008, the trial court sentenced defendant to three concurrent terms of 16 years' imprisonment. Defendant appealed, and this court affirmed as modified and remanded for issuance of an amended sentencing judgment reflecting monetary credit applied to specified assessments. *People v. Jones*, No. 4-09-0227 (Mar. 2, 2011) (unpublished order under Supreme Court Rule 23).

¶ 31 In December 2011, defendant filed his *pro se* petition for postconviction relief. Defendant alleged he was denied due process on multiple grounds, including the prosecutor's failure to produce testimony he promised during his opening statement. According to defendant, during its opening statement, the State asserted the following: "I believe, ladies and gentlemen, you're going to hear some statements from several of the individuals that were present: Mindy Nicole Robbins, Nadia King, LaToya Miller. They saw the defendant and those he is legally responsible for *** point[] the gun towards the crowd and the next thing they knew, the gun started firing once, twice." The trial transcripts show, however, Robbins never saw defendant and Miller did not testify.

¶ 32 Among the other claims, defendant raised a claim of actual innocence. Attached to the postconviction petition is an affidavit by Eddie Spice. According to Spice, defendant "was falsely implicated as an accomplice in connection to the shooting." Spice averred, after he shot into the crowd, Clark-Phifer, McNabb, and Spice ran from the scene. When the three reached Blackstone Street, they saw defendant parked on the side of the street. Clark-Phifer said he "knew him a little" and they could ask him for a ride. Defendant agreed, and the three were pulled over a block later. The police officer took each person out individually to perform a

search. That officer took defendant out first. When that occurred, Clark-Phifer said the three should put the blame on defendant since they did not really know him. Defendant "had no idea of what" they "had just done." Spice averred defendant "had no involvement in, nor participated or planned in the commission of the offense for which he was falsely implicated."

¶ 33 In January 2012, the trial court advanced defendant's petition to the second stage of postconviction proceedings and appointed counsel.

¶ 34 In August 2012, W. Keith Davis, defendant's appointed counsel, filed a motion for a finding of "no merit" and a certificate purporting to comply with Illinois Supreme Court Rule 651(c) (eff. Apr. 26, 2012). Postconviction counsel, citing *Anders v. California*, 386 U.S. 738 (1967), advised the trial court the postconviction action was "without merit." Postconviction counsel attached a 23-page memorandum advising the trial court of the events of trial and our decision on direct appeal. At the conclusion of the memorandum, counsel wrote the following regarding the postconviction petition:

"I will address [defendant's] complaints *seriatim*:

Complaint 1: Various mistakes were made at trial, depriving you of fairness. Any such matter was in the record and could have been raised on direct appeal. It is waived for purposes of Post-Conviction litigation. See *People versus Brown*, *supra*.

Complaint 2: Your trial Counsel's performance was deficient, depriving you of a fair trial. The decision to act, or not to act, in the manner you complain about is one of trial strategy and therefore cannot be the basis of a Post-Conviction claim.

Indeed, counsel is invested with the right to formulate the decision on what defense will be pursued even if the client disagrees.

[Citations.].

Complaint 3: Newly discovered evidence exonerates you. Eddie Spice says that you weren't in on it. The purpose of the Post-Conviction Act is to explore claims of constitutional deprivation that have not been previously litigated; and is not a mechanism for determining guilt or innocence. [Citations.]. Where a defendant, convicted on an accountability theory for a shooting offers an affidavit from the shooter, attesting to the fact that he was not involved, such a claim is insufficient to establish a Post-conviction claim. *People v. Edwards*, 2012 IL 111711[, 969 N.E.2d 829]. Note that *Edwards* is a VERY recent case and is from [our] Supreme Court.

In my opinion, after due consideration of the record in the case, and of the applicable case law, the petitioner for Post-Conviction Relief is without merit and will fail.

This Post-conviction Petition is without merit and out to be ***found*** to be 'without merit.' This means that it [ought to] be promptly dismissed." (Emphasis in original.)

¶ 35 In November 2012, postconviction counsel filed a motion for leave to file an amended postconviction petition and an affidavit by Clark-Phifer. In the motion for leave,

postconviction counsel stated he was abandoning defendant's *pro se* claims and pursuing a claim the prosecutor "bid" Clark-Phifer to testify falsely. In the affidavit, Clark-Phifer asserted, contrary to his trial testimony, he did not feel endangered when he testified. Instead, Clark-Phifer averred he felt pressured to testify by the prosecutor. Clark-Phifer stated he believed defendant did not know a shooting was to occur, but defendant was "just in the car, headed for Evergreen [Apartments]."

¶ 36 In February 2013, the State moved to dismiss the amended petition. The State argued the affidavit disclosed no relevant new information, as Clark-Phifer testified at trial his fear was not caused by defendant. The State further maintained evidence of defendant's guilt was substantial and any pressure felt by Clark-Phifer was from the prosecutor's prompting him to tell the truth.

¶ 37 In May 2013, a hearing was held on the motions. Postconviction counsel filed a second Rule 651(c) certificate. The trial court granted leave to file the amended petition and the State's motion to dismiss. The court found Clark-Phifer's assertion defendant was surprised by the shooting would have been inadmissible at trial. Defendant asked the court if he could speak. The court told counsel to speak with defendant. Defendant complained the amended petition superseded his *pro se* petition and postconviction counsel refused to frame his beliefs and "feelings" for postconviction review. The trial court responded, telling defendant such matters could be raised on appeal, but the *pro se* petition had been superseded. Defendant requested an appeal. The court directed its clerk to file a notice of appeal and appointed the office of the State Appellate Defendant to represent defendant.

¶ 38 Due to procedural errors on behalf of the trial court, the notice of appeal was not

filed until April 2015. In October 2015, the Supreme Court of Illinois directed this court to accept the late notice of appeal of the May 2013 order. *Jones v. Justices of the Illinois Appellate Court, Fourth District*, No. 119906 (Oct. 26, 2015) (nonprecedential supervisory order directing the Fourth District to accept a late notice of appeal in cause as properly perfected appeal from circuit court's May 24, 2013, order dismissing movant's postconviction petition).

¶ 39

II. ANALYSIS

¶ 40 On appeal, defendant argues he was denied the reasonable level of assistance by postconviction counsel. Defendant contends postconviction counsel abandoned all of his arguments in his *pro se* petition due to a misunderstanding of the law. Specifically, defendant points to the following alleged errors made by postconviction counsel in the motion to withdraw: (1) postconviction counsel cited *Anders*, which does not apply to postconviction proceedings; (2) postconviction counsel asked the trial court to dismiss defendant's petition, an act the trial court may not make absent a request by the State (see *People v. Thomas*, 2013 IL App (2d) 120646, ¶ 8, 992 N.E.2d 143); (3) postconviction counsel decided not to pursue defendant's *pro se* claim the prosecutor improperly promised evidence that was not provided upon determining defendant forfeited the claim by not raising it before the trial court or on direct appeal, ignoring the well-known means to avoid forfeiture by alleging trial and appellate counsel were ineffective for failing to raise the argument (see *People v. Turner*, 187 Ill. 2d 406, 413, 719 N.E.2d 725, 729 (1999)); (4) postconviction counsel erroneously decided not to pursue his claim of actual innocence upon concluding actual innocence was not a proper consideration under the Act; and (5) postconviction counsel wrongly interpreted *Edwards* as prohibiting consideration of a codefendant's testimony on postconviction review. In addition, defendant argues postconviction

counsel instead filed an amended petition that raised a frivolous issue that contradicted defendant's own trial testimony.

¶ 41 At the second stage of proceedings under the Act, counsel is appointed to assist a petitioner during further postconviction proceedings. See *People v. Snow*, 2012 IL App (4th) 110415, ¶ 14, 964 N.E.2d 1139. Appointed counsel is expected to provide reasonable assistance and present the petitioner's claims adequately. *People v. Suarez*, 224 Ill. 2d 37, 42, 862 N.E.2d 977, 979-80 (2007). To ensure appointed counsel meets those expectations, our supreme court created Illinois Supreme Court Rule 651(c) (eff. Apr. 26, 2012). Under this rule, appointed counsel must "consult with the petitioner to ascertain his contentions, examine the record of the trial proceedings, and make any amendments to the *pro se* petition necessary for an adequate presentation of the petitioner's complaints." *People v. Nelson*, 2016 IL App (4th) 140168, ¶ 15, 49 N.E.3d 1007. The rule further requires appointed counsel certify he or she complied with the rule's mandates. Ill. S. Ct. R. 651(c) (eff. Apr. 26, 2012). A certificate filed pursuant to Rule 651(c) creates a presumption the petitioner received reasonable assistance. See *People v. Jones*, 2011 IL App (1st) 092529, ¶ 23, 955 N.E.2d 1200. This presumption may be rebutted by proof appointed counsel filed to perform the duties of Rule 651(c). *Jones*, 2011 IL App (1st) 092529, ¶ 23, 955 N.E.2d 1200.

¶ 42 This case presents an unusual second-stage scenario. Generally, when an amended petition is filed, no motion to withdraw as counsel precedes it. Thus, typically, the record does not expressly reveal the reasons postconviction counsel selects the claims to pursue in an amended petition and those to abandon. Here, however, because of the 23-page motion to withdraw filed by postconviction counsel, we have a record of the reasons counsel abandoned

defendant's *pro se* claims.

¶ 43 As defendant argues, we find the expressed reasons postconviction counsel refused to proceed on defendant's *pro se* claims are legally insufficient. Regarding defendant's claim the prosecutor improperly promised evidence during his opening statement that was not presented at trial, postconviction counsel provided only one reason the claim was frivolous: "Any such matter was in the record and could have been raised on direct appeal[; it] is waived for purposes of Post-Conviction litigation." As defendant points out, this reason is insufficient. Defendant's purported waiver has an easy fix on an amended postconviction petition—postconviction counsel must simply add an allegation trial counsel and appellate counsel were ineffective for not raising the issues below. See *People v. Flores*, 153 Ill. 2d 264, 277, 606 N.E.2d 1078, 1084 (1992) (noting "the ease with which a petitioner may evade the operation of waiver and *res judicata* simply by couching [the] claims in the context of ineffective assistance"). The failure to implement this fix supports a determination postconviction counsel provided unreasonable assistance. See *Turner*, 187 Ill. 2d 406 at 414, 719 N.E.2d 725, 730.

¶ 44 Regarding defendant's *pro se* claim of actual innocence, postconviction counsel provided two reasons for abandoning that claim: the Act does not provide a means to determine innocence or guilt and affidavits from co-defendants may not be considered as new evidence on postconviction review. Both reasons are incorrect. Actual-innocence claims are cognizable under the Act. *People v. Washington*, 171 Ill. 2d 475, 489, 665 N.E.2d 1330, 1337 (1996) ("[T]here is footing in the Illinois Constitution for asserting freestanding innocence claims based upon newly discovered evidence under the Post-Conviction Hearing Act."). Codefendants' affidavits may be used to support a postconviction petitioner's claims. See *Edwards*, 2012 IL

111711, ¶ 38, 969 N.E.2d 829.

¶ 45 These basic misunderstandings establish postconviction counsel could not and did not satisfy the requirements of Rule 651(c). The record plainly shows counsel's consideration of defendant's constitutional claims was limited or foreclosed by the perceived procedural bars to those claims. The record does not establish counsel concluded the claims would fail substantively. This failure is particularly troubling given the trial court's first-stage determination the *pro se* petition was not frivolous or patently without merit. If counsel did not know forfeited arguments could be cured by simple allegations of ineffective assistance or the Act permits claims of actual innocence, counsel could not have reasonably ascertained defendant's *pro se* claims, reviewed defendant's record, or made any amendments necessary to present the *pro se* constitutional contentions adequately (see *People v. Williams*, 186 Ill. 2d 55, 60, 708 N.E.2d 1152, 1154-55 (1999)). Counsel's expressed misunderstandings of the law permeated every step he made under Rule 651(c) and rebuts the presumption defendant was provided the reasonable assistance the rule requires.

¶ 46 The State's arguments to the contrary are unconvincing. The State contends counsel's motion to withdraw does not show postconviction counsel was unfamiliar with the law regarding postconviction proceedings. The State maintains postconviction counsel's statement "any claim that was raised or could have been raised on direct appeal cannot be raised in post-conviction" correctly states the law. This argument, however, ignores *Turner's* finding that although such a statement is true, appointed counsel may be found not to have provided reasonable representation when not amending a petition in a manner that preserves otherwise forfeited claims. See *Turner*, 187 Ill. 2d at 414, 719 N.E.2d at 730.

¶ 47 The State contends there are other valid reasons supporting postconviction counsel's decision to abandon the *pro se* claims. For example, the State maintains defendant's opening-statement claim would fail because there is no evidence of deliberate misconduct. The State argues the actual-innocence claim fails because Spice's affidavit does not establish defendant was not at the scene of the shooting. And the State maintains counsel's citation to *Edwards*, in which an actual-innocence claim was asserted and considered under the Act (see *Edwards*, 2012 IL 111711, ¶ 1, 969 N.E.2d 829), establishes counsel knew such a claim could be raised for postconviction review.

¶ 48 These arguments lack merit. First, counsel's failure to comply with Rule 651(c) necessitates remand without an examination of whether the claims are sufficient. See *Suarez*, 224 Ill. 2d at 51-52, 862 N.E.2d at 985. Second, while such analysis of the reasons appointed counsel in general may have abandoned certain claims and pursued others may be appropriate in cases where counsel's reasons are not provided, they have no place here. Counsel specified the reasons he abandoned the claims defendant wished to pursue. Given this fact, it would be inappropriate to infer counsel believed otherwise based on language from a case counsel cited for different purposes. In addition, it seems illogical to find counsel's citation to *Edwards* establishes he knew actual-innocence claims could be raised (despite his statement to the contrary), when counsel plainly otherwise misread *Edwards*. Counsel's own language establishes he did not know how to amend and present defendant's claims. Counsel's language establishes he did not know he could even pursue certain claims.

¶ 49 We note, in addition to these core deficiencies, counsel's decision to amend the *pro se* petition with an affidavit signed by Clark-Phifer is troubling. Clark-Phifer is the person

