

2018 IL App (1st) 150066-U

No. 1-15-0066

Order filed December 19, 2018

Third Division

**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).

---

IN THE  
APPELLATE COURT OF ILLINOIS  
FIRST DISTRICT

---

THE PEOPLE OF THE STATE OF ILLINOIS,	)	Appeal from the
	)	Circuit Court of
Plaintiff-Appellee,	)	Cook County.
	)	
v.	)	Nos. 99 CR 13912
	)	04 CR 15909
DECEDRICK WALKER,	)	
	)	Honorable
Defendant-Appellant.	)	Carol M. Howard,
	)	Judge, presiding.

---

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

**ORDER**

¶ 1 *Held:* We vacate the circuit court's dismissal of defendant's second-stage postconviction petition and remand for further second-stage proceedings in compliance with Illinois Supreme Court Rule 651(c).

¶ 2 Defendant Decedrick Walker 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 2010)).

Defendant maintains that postconviction counsel provided unreasonable assistance, the Supreme

Court Rule 651(c) (eff. Feb. 6, 2013) certificate filed by postconviction counsel is facially deficient, and the record does not otherwise indicate that counsel complied with Rule 651(c). We vacate and remand for further proceedings.

¶ 3 BACKGROUND

¶ 4 In 1999, defendant was charged by indictment in case No. 99 CR 13912 with first degree murder, aggravated criminal sexual assault, and aggravated kidnapping. Defendant moved to dismiss that indictment on double-jeopardy grounds. The circuit court denied that motion and defendant took an interlocutory appeal to this court. On appeal, this court dismissed some of the charges, but left the bulk of the indictment, including the first degree murder charge, intact. See *People v. Walker*, 1-01-2207 (2003) (unpublished order under Supreme Court Rule 23).

¶ 5 In April 2006, defendant filed a motion to suppress statements in case No. 99 CR 13912. The motion alleged that defendant was interviewed by the police and that (1) he was not properly Mirandized and (2) he was inebriated during the interview, thus rendering his statements involuntary. The motion further alleged the statements were obtained after defendant invoked his right to remain silent and requested an attorney and were the result of physical and mental coercion. Specifically, defendant asserted he was slapped and confronted with evidence, including a polygraph examination, which had been obtained in violation of the fourth amendment.

¶ 6 During a hearing on defendant's motion, various police officers testified that defendant was advised of his rights, was not physically abused, and did not appear inebriated.

¶ 7 In July 2006, the circuit court denied defendant's motion. The court found the police officers who testified were credible and noted, "I do not find the police officers incredible when

they say they did not strike the defendant or do anything like that.” The court concluded, “under the totality of the circumstances \*\*\* the police officers’ conduct was appropriate, that the time in custody was not excessive and did not lead to any kind of a coerced statement.”

¶ 8 On January 17, 2008, defendant pleaded guilty in both cases. With respect to case No. 99 CR 13912, defendant confessed to the abduction, sexual assault, and murder of Shepherd, which was corroborated by DNA and other physical evidence. And in case No. 04 CR 15909, defendant admitted to the sexual assault, robbery, and battery of another woman, which was corroborated by DNA evidence. The factual basis for defendant’s plea noted that defendant was treated “all right” by police. The trial court imposed a sentence of natural life imprisonment in case No. 99 CR 13912 and a concurrent term of 30 years’ imprisonment in case No. 04 CR 15909. As part of the plea agreement, defendant waived his right to appeal or to seek relief under the Act.

¶ 9 In January 2011, defendant filed a *pro se* petition for relief under the Act alleging that his guilty pleas were involuntary because he and his attorney did not understand the scope of the Act or the federal habeas corpus statute, the remedies of which defendant had only recently become aware. Further, his attorney failed to advise him that jurisdictional issues, including challenges to the indictment, could not be waived and could be raised at any time. Defendant claimed his confession with respect to case No. 99 CR 13912 was the result of physical abuse and the plea was void because the trial judge fraudulently concealed that he had participated in physical abuse of suspects in police custody while employed as a prosecutor. Finally, defendant asserted the State’s Attorney’s office entered into the plea in bad faith because it was aware of evidence regarding allegations involving the trial judge and torture of suspects by then police officer Jon Burge.

¶ 10 In March 2011, the circuit court appointed the Cook County public defender's office to represent defendant. Assistant Public Defender Thomas Herres appeared on behalf of defendant and, in July 2011, obtained an order for all transcripts from case Nos. 99 CR 13912 and 04 CR 15909. At the next court date, Herres indicated he "was in the process of obtaining the trial file" as well as the transcript of the guilty plea hearing.

¶ 11 In December 2011, Herres obtained an order for the common law record in both cases, noting that defendant "pled guilty on two cases at once." The circuit court stated, "just so the record is clear \*\*\* I'm appointing the Public Defender's Office to represent [defendant] on both cases."

¶ 12 In June 2012, Herres informed the circuit court that he had received "copies of the transcripts and the common law record." Counsel told the court that it was a "serious case" with "rather interesting allegations" and he wanted to meet defendant in person at the prison.

¶ 13 In November 2012, Assistant Public Defender Gwendollette Ward-Brown appeared on behalf of defendant and informed the court that she was replacing Herres, who had recently retired. Ward-Brown acknowledged that the transcripts had already been ordered and that she would be able to file something soon.

¶ 14 In January 2013, Ward-Brown told the court that she had "everything but the transcript of the guilty plea" and, once she received the transcript, she would determine whether to file an amended petition or a Rule 651(c) certificate. The court then clarified, "So [defendant] has filed a P.C. petition on both cases?" Ward-Brown responded, "[y]es," and further acknowledged the matter involved a simultaneous plea. At a subsequent status hearing, Ward-Brown informed the

court she still had not received the official transcript but had received a copy of the plea agreement.

¶ 15 In July 2013, Ward-Brown informed the court that she was filing her Rule 651(c) certificate that day.<sup>1</sup> The Rule 651(c) certificate was captioned under case No. 04 CR 15909. In the certificate, Ward-Brown stated that she had (1) communicated with defendant by mail regarding his claims of deprivation of constitutional rights, (2) examined the report of proceedings concerning indictment number 04 CR 15909, and (3) determined defendant's petition as written adequately represented his constitutional claims and deprivations and she would not supplement the petition. The following colloquy ensued:

“[THE COURT:] You are filing on both of them?

[WARD-BROWN:] I have one case.

[THE COURT:] Oh, you do?

[WARD-BROWN:] Yes.

[THE COURT:] I show there's a '99 case and an '04 case.

[WARD-BROWN:] I have an '04 case, I do not the [*sic*] '99 case. Okay.

I'm filing on the '04 case.

[THE COURT:] Okay.

[ASSISTANT STATE'S ATTORNEY:] Your Honor, I am stepping up on this case; however, in my file, the post-conviction from 2011 does indicate two case numbers.

---

<sup>1</sup> The certificate is file stamped June 2, 2013.

[THE COURT:] And I show that, too. On the half sheet I show the '04 and the '99. It actually says, Defense attorney filed a 651(c) certificate. Continued for status for today's date, and it says that on both of the half sheets.

[ASSISTANT STATE'S ATTORNEY:] My notes from the last court date also say filed 651(c), continued for status.

[THE COURT:] Okay. We need to have a little clarification on that one since counsel's indicated she's only filing on the '04. We'll take a date to clarify that and find out what's going on with that other matter.

Counsel, do you not have the other '99 matter at all?

[WARD-BROWN:] I do have the PC, I do not have a transcript for that, however, your Honor.

Oh, you know what, these are combined. They were concurrent sentences in a guilty plea. I'll just add the number.

[THE COURT:] You're going to add the number?

[WARD-BROWN:] Yes.

[THE COURT:] That's fine. I'll have the half sheet reflect that you've filed it, and I'll clarify it that it's combined."

The Rule 651(c) certificate contained in the record reflects that "99 CR 13912" is handwritten in the caption space underneath typewritten "INDICTMENT NO. 04 CR 15909."

¶ 16 In March 2014, the State filed a motion to dismiss defendant's postconviction petition. Ward-Brown did not file a response and, at the hearing on the motion, informed the court she did not wish to add to defendant's *pro se* petition, that defendant had adequately stated the issues,

and she would stand on the petition. The trial court subsequently granted the State's motion to dismiss defendant's postconviction petition. Defendant filed a timely notice of appeal and this appeal followed.

¶ 17

#### ANALYSIS

¶ 18 On appeal, defendant argues he received unreasonable assistance of counsel because postconviction counsel's Rule 651(c) certificate was facially deficient and the record does not otherwise indicate that she complied with the requirements of the rule. He asserts that this court should remand for new second-stage proceedings under the Act with newly-appointed counsel.

¶ 19 The Act provides a three-stage procedural mechanism for a defendant to assert a substantial denial of his constitutional rights in the underlying proceedings giving rise to his conviction. 725 ILCS 5/122-1 (West 2010); *People v. Allen*, 2015 IL 113135, ¶ 20. Defendant's postconviction petition was dismissed at the second stage. At the second stage of postconviction proceedings, the defendant has the burden of making a substantial showing of a constitutional violation. *People v. Williams*, 2016 IL App (1st) 133459, ¶ 25. Further, at this stage, counsel may be appointed and the State may move to dismiss or answer the petition. 725 ILCS 5/122-4, 122-5 (West 2010); *People v. Domagala*, 2013 IL 113688, ¶ 33.

¶ 20 Under the Act, a petitioner is entitled to a "reasonable" level of assistance of counsel. *People v. Cotto*, 2016 IL 119006, ¶ 30. To assure counsel provides reasonable assistance, Rule 651(c) imposes certain duties on counsel. *People v. Perkins*, 229 Ill. 2d 34, 42 (2007). Pursuant to Rule 651(c), counsel is required to: (1) consult with the defendant to ascertain his contentions regarding how he was deprived of his constitutional rights, (2) examine the record of the trial court proceedings, (3) and make "any amendments to the petitions filed *pro se* that are necessary

for an adequate presentation of [the defendant's] contentions." Ill. S. Ct. R. 651(c) (eff. Feb. 6, 2013); *People v. Blanchard*, 2015 IL App (1st) 132281, ¶ 14.

¶ 21 Counsel's filing of a Rule 651(c) certificate gives rise to a rebuttal presumption that counsel performed the requisite duties under the rule. *People v. Profit*, 2012 IL App (1st) 101307, ¶ 23. Further, an attorney's substantial compliance with Rule 651(c) is sufficient. *Id.* ¶ 18. However, "[t]he presumption that the defendant received the required representation may be rebutted by the record." *People v. Rivera*, 2016 IL App (1st) 132573, ¶ 36. We review an attorney's compliance with Rule 651(c) *de novo*. *Blanchard*, 2015 IL App (1st) 132281, ¶ 15.

¶ 22 Defendant first contends counsel's Rule 651(c) certificate is facially deficient because it did not reference case No. 99 CR 13912, which was the basis for most of his postconviction claims. Specifically, he asserts that the body of the certificate, as corroborated by the transcript of the hearing in which counsel explained her filing the certificate, support the conclusion that she failed to read the report of proceedings in case No. 99 CR 13912. We agree.

¶ 23 The certificate contained in the record reflects that "99 CR 13912" is handwritten in the caption space of the certificate. However, there is no mention of case No. 99 CR 13912 in the body of the certificate where counsel certifies that she reviewed the proceedings concerning indictment No. 04 CR 15909. This omission is striking, as multiple allegations in defendant's postconviction petition arise in the context of case No. 99 CR 13912. Substantial compliance with Rule 651(c) requires counsel to examine as much of the record as is necessary to adequately present and support the constitutional claims raised by the defendant. *People v. Davis*, 156 Ill. 2d 149, 164-65 (1993). Here, Ward-Brown's failure to explicitly reference case No. 99 CR 13912 in the body of the Rule 651(c) certificate strongly indicates that she did not examine the trial record



in that case. On its face, the certificate of compliance failed to comply with Rule 651(c)'s requirement to examine the record and, therefore, does not give rise to a rebuttable presumption that defendant received adequate representation under the Act. See *Rivera*, 2016 IL App (1st) 132573, ¶ 36.

¶ 24 We recognize that, as the State points out, the filing of “a poorly-drafted certificate is harmless error if the record demonstrates that counsel was otherwise competent and fulfilled her required duties [under Rule 651(c)].” *People v. Hotwagner*, 2015 IL App (5th) 130525, ¶ 59. Here, however, viewing the entire record, we cannot say the record shows counsel was otherwise competent or performed her Rule 651(c) duty to examine the record underlying defendant’s postconviction claims in case No. 99 CR 13912. See *Blanchard*, 2015 IL App (1st) 132281, ¶ 17 (either the certificate or the record must show compliance with Rule 651(c)).

¶ 25 The record shows Ward-Brown was initially aware that the postconviction matter involved two separate cases and she was waiting to file a certificate until she received the transcript of the hearing on the guilty plea. Prior to filing her Rule 651(c) certificate, Ward-Brown appeared before the court on several dates. On the first date, Ward-Brown acknowledged that the transcripts had already been ordered. The common law record includes an order submitted by Herres, defendant’s initial postconviction counsel, requesting all transcripts for both case No. 99 CR 13912 and case No. 04 CR 15909. Later, in January 2013, Ward-Brown appeared and informed the court she had “everything but the transcript of the guilty plea” and, once she received the transcript, she would determine whether to file an amended petition or a Rule 651(c) certificate. The court then clarified, “So [defendant] has filed a P.C. petition on both cases?” Ward-Brown responded, “[y]es” and further acknowledged the matter involved a

simultaneous plea. At another status hearing, Ward-Brown told the court she still had not received the official transcript but had received a copy of the plea agreement, which would show the two consolidated cases.

¶ 26 However, at the hearing in which Ward-Brown filed a certificate pursuant to Rule 651(c), she did not include any reference to case No. 99 CR 13912 in her certificate and, under questioning by the court, expressed confusion as to her representation of defendant in that particular case. She eventually acknowledged she did represent defendant in case No. 99 CR 13912, and tried to rectify the omission in her certificate by handwriting the missing case number in the caption. Subsequently, in the hearing on the State's motion to dismiss, Ward-Brown did not provide any argument with respect to the postconviction petition such that we can ascertain her efforts, if any, regarding defendant's postconviction claims in case No. 99 CR 13912. Given counsel's representations at the time she filed her defective Rule 651(c) certificate and her lack of argument with respect to the petition, we cannot say the record shows counsel examined the trial court record in case No. 99 CR 13912 as required by the Rule for reasonable assistance under the Act. See *Blanchard*, 2015 IL App (1st) 132281, ¶ 17.

¶ 27 Moreover, as appellate counsel points out, the transcripts from the hearing on defendant's motion to suppress statements were not in the record he received and he had to request that they be prepared and supplemented to the record on appeal. The report of proceedings on the motion to suppress was central to defendant's postconviction petition, which alleged, *inter alia*, that his confession was the result of physical abuse. Although Ward-Brown told the circuit court at a status hearing that she had "everything" except the transcript of the guilty plea hearing, on this record, we cannot determine whether she examined those transcripts in case No. 99 CR 13912.

The fact that defendant's appellate counsel had to request preparation of more than 63 transcripts of trial court proceedings missing from the record on appeal lends support to our conclusion that postconviction counsel did not review the relevant transcripts in case No. 99 CR 13912.

¶ 28 We are unpersuaded by the State's reliance on *People v. Turner*, 187 Ill. 2d 406 (1999), in which our supreme court rejected the defendant's claim that postconviction counsel provided unreasonable assistance where transcripts from five hearing dates were not included in the record. *Turner*, 187 Ill. 2d at 411-12. The court in *Turner* recognized that the missing portions of the record had no relevance to the constitutional violations the defendant raised in his petition. *Id.* Here, however, as the postconviction petition alleged misconduct in obtaining defendant's confession, examining the transcripts from the hearing on the motion to suppress statements would be necessary for defendant's postconviction claim and, ultimately, for adequate representation under Rule 651(c).

¶ 29 For the reasons set forth above, we vacate the judgment of the circuit court of Cook County dismissing defendant's postconviction petition. We remand to allow counsel to comply with the certification requirements of Rule 651(c) by filing a supplemental certificate of compliance reflecting her examination of the record relative to defendant's claims relating to case No. 99 CR 13912. Upon compliance with Rule 651(c), the circuit court should reconsider defendant's *pro se* petition. See *Blanchard*, 2015 IL App (1st) 132281, ¶ 19.

¶ 30 Vacated and remanded with directions.