

NOTICE  
Decision filed 08/05/19. The text of this decision may be changed or corrected prior to the filing of a Petition for Rehearing or the disposition of the same.

2019 IL App (5th) 150221-U

NO. 5-15-0221

IN THE

APPELLATE COURT OF ILLINOIS

FIFTH DISTRICT

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).

THE PEOPLE OF THE STATE OF ILLINOIS,	)	Appeal from the
	)	Circuit Court of
Plaintiff-Appellee,	)	Madison County.
	)	
v.	)	No. 06-CF-1337
	)	
DEMOND HAYNES,	)	Honorable
	)	Ronald R. Slemer,
Defendant-Appellant.	)	Judge, presiding.

JUSTICE BOIE\* delivered the judgment of the court.  
Justices Welch and Chapman concurred in the judgment.

**ORDER**

¶ 1 *Held:* We affirm the order of the circuit court of Madison County finding that postconviction counsel complied with Supreme Court Rule 651(c) and rendered reasonable assistance of counsel at the third stage evidentiary hearing by having defendant testify on the issues raised in defendant’s postconviction petition.

¶ 2 **BACKGROUND**

¶ 3 Defendant was charged with four counts of first degree murder and two counts of home invasion in connection with the beating death of Alan Curtis on June 13, 2006. The

---

\*Justice Goldenhersh was originally assigned to participate in this case. Justice Boie was substituted on the panel subsequent to Justice Goldenhersh’s retirement and has read the briefs and listened to the recording of oral argument.

two home invasion charges and one first degree murder charge were dismissed and defendant proceeded to jury trial on three counts of first degree murder.

¶ 4 On the second day of the jury trial, defendant indicated that he wanted to waive his right to a jury trial and proceed with a stipulated bench trial. As part of the stipulated bench trial agreement, the State agreed to dismiss a pending aggravated battery charge and to recommend no more than 45 years' confinement. The court accepted the stipulated bench trial agreement and bound itself to a sentencing range between 20 and 45 years' confinement. On December 12, 2007, after the stipulated bench trial, defendant was found guilty on three counts of first degree murder<sup>1</sup> and was sentenced to 42 years' confinement. Defendant appealed his sentence and this court affirmed. *People v. Haynes*, 393 Ill. App. 3d 1116 (2009) (table) (unpublished order under Illinois Supreme Court Rule 23).

¶ 5 On June 10, 2010, defendant filed a *pro se* petition for postconviction relief pursuant to the Post-Conviction Hearing Act (725 ILCS 5/122-1 *et seq.* (West 2010)). Defendant's *pro se* postconviction petition alleged, *inter alia*, ineffective assistance of trial counsel for failing to consult with defendant on discovery and trial strategy, failing to investigate and interview eyewitnesses, failing to interview and call an alibi witness, failing to challenge trial evidence, failing to file a motion to quash the arrest, and failing to properly advise defendant on the consequences of a stipulated bench trial. Defendant's

---

<sup>1</sup>Defendant's *pro se* petition and amended petitions state that defendant was convicted of first degree murder and two counts of home invasion. However, it is clear from the record that the court dismissed one count of first degree murder and both counts of home invasion on December 10, 2007. Further, the trial court entered a judgment of guilty as to the three counts of first degree murder on December 12, 2007.

*pro se* petition for postconviction relief also alleged ineffective assistance of his appellate counsel for, *inter alia*, failing to consult with defendant, failing to challenge the trial court's findings of fact and conclusions, and failing to raise ineffective assistance of trial counsel. The circuit court appointed Rand S. Hale as postconviction counsel to represent the defendant.

¶ 6 On January 11, 2013, postconviction counsel filed an amended postconviction petition which addressed the same issues raised in defendant's *pro se* postconviction petition but added additional claims of ineffective assistance of trial counsel for failing to properly advise defendant on the consequences of waiving the right to a jury trial; failing to explain what evidence defendant was stipulating to at the stipulated bench trial; failing to object to count I, which stated defendant beat the victim with a bludgeon when there was no evidence defendant used a weapon; failing to object to count II, which stated defendant committed murder during a mob action when there was no evidence that two or more individuals were involved in the murder; failing to call Dr. Raj Nanduri concerning the fact that the victim was under the influence of a controlled substance and that such intoxication could have been the cause of death; and failing to challenge the blood splatter evidence. The amended postconviction petition also added the additional claims that defendant's appellate counsel was ineffective in failing to object to count I and failing to file a petition for defendant to withdraw his guilty plea.

¶ 7 After meeting with the defendant on January 16, 2013, postconviction counsel filed a second amended postconviction petition on January 22, 2013. The second amended postconviction petition set forth the same allegations noted above and added

claims that the circuit court failed to properly admonish the defendant that a stipulated bench trial meant defendant was waiving his right to confront his accusers and witnesses and that the circuit court failed to warn or advise defendant that by stipulating to the evidence provided by the State, such evidence would be sufficient to convict him.

¶ 8 On March 11, 2013, defendant filed a *pro se* supplemental petition to the second amended postconviction petition. Although the supplemental petition states, “by and through his attorney Rand S. Hale,” the supplemental petition is only signed by the defendant and there is no indication that postconviction counsel was involved in the filing. The *pro se* supplemental petition to the second amended postconviction petition added a claim that the circuit court erred in allowing defendant to withdraw his jury request after the jury was impaneled and heard evidence.

¶ 9 The State filed a motion to dismiss defendant’s second amended postconviction petition on August 27, 2013, and after a hearing, the court denied the State’s motion to dismiss on February 29, 2014. On April 29, 2015, a third stage evidentiary hearing was conducted on defendant’s second amended postconviction petition. At the conclusion of the hearing, the following dialogue was held between the court and postconviction counsel:

“THE COURT: Mr. Hale, I did make a mistake about the 651 Affidavit. So let’s cover that on the record right now. And what happened when I saw that there was an affidavit, in fact, it was from your client. So I need—I need your statement on the record here.

MR. HALE: I would indicate I've been conferring with my client since December of 2010 with reference to his case. I did modify his pleadings and he then supplemented with some additional matters but I did confer with him and modify the case and that was after conferring with him.

THE COURT: And I would note for the record that the record shows quite clearly those steps were, in fact, taken and that Mr. Hale is in compliance with Supreme Court Rule 651. That will conclude this matter. Thank you."

¶ 10 On May 18, 2015, the court issued an order denying defendant's second amended postconviction petition. Defendant appeals the judgment of the circuit court denying postconviction relief arguing postconviction counsel failed to comply with Illinois Supreme Court Rule 651(c) (eff. Dec. 1, 1984) and that postconviction counsel failed to provide a reasonable level of assistance at the third stage evidentiary hearing.

¶ 11 ANALYSIS

¶ 12 I. Whether Postconviction Counsel Complied With Illinois Supreme Court Rule 651(c)

¶ 13 The Post-Conviction Hearing Act (Act) (725 ILCS 5/122-1 *et seq.* (West 2016)) provides a remedy to a criminal defendant whose federal or state constitutional rights were substantially violated in his original trial or sentencing hearing. *People v. Pitsonbarger*, 205 Ill. 2d 444, 455 (2002). A postconviction proceeding is not an appeal from an underlying judgment, but rather a collateral attack on the judgment. *People v. Ortiz*, 235 Ill. 2d 319, 328 (2009). As a collateral proceeding, a postconviction

proceeding allows inquiry only into constitutional issues that were not and could not have been adjudicated in an appeal of the underlying judgment. *Id.*

¶ 14 The Act provides a three-stage process for the adjudication of postconviction petitions. *People v. English*, 2013 IL 112890, ¶ 23. At the first stage, the trial court independently assesses the defendant's petition and if the court determines that the petition is "frivolous" or "patently without merit," the court can summarily dismiss it. 725 ILCS 5/122-2.1(a)(2) (West 2016); *People v. Edwards*, 197 Ill. 2d 239, 244 (2001). To survive the first stage, "a petition need only present the gist of a constitutional claim." *People v. Gaultney*, 174 Ill. 2d 410, 418 (1996).

¶ 15 If a petition is not dismissed at the first stage, it advances to the second stage where an indigent petitioner can obtain appointed counsel and the State can move to dismiss it. 725 ILCS 5/122-2.1(b), 122-4, 122-5 (West 2016); *Edwards*, 197 Ill. 2d at 245-46. At the second stage, the trial court is "foreclosed from engaging in any fact-finding because all well-pleaded facts not rebutted by the record are to be taken as true." *People v. Phyfiher*, 361 Ill. App. 3d 881, 884 (2005) (citing *People v. Coleman*, 183 Ill. 2d 366, 380-81 (1998)). At the second stage, if the defendant makes a substantial showing of a constitutional violation, the petition advances to the third stage where the trial court conducts an evidentiary hearing. 725 ILCS 5/122-6 (West 2016); *Edwards*, 197 Ill. 2d at 246.

¶ 16 At the third stage, a defendant has the burden of proving a substantial showing of a constitutional violation. *People v. Pendleton*, 223 Ill. 2d 458, 472-73 (2006). The trial court "may receive evidentiary proof via affidavits, depositions, testimony, or other

evidence, and may order the petitioner brought before the court” at the third stage evidentiary hearing. *People v. Gerow*, 388 Ill. App. 3d 524, 527 (2009). The evidentiary hearing allows the parties to “develop matters not contained in the trial record and, thus, not before the appellate court.” *People v. Lester*, 261 Ill. App. 3d 1075, 1078 (1994).

¶ 17 As stated above, counsel may be appointed at the second stage where a defendant is indigent (725 ILCS 5/122-4 (West 2016)), and the right to counsel in postconviction proceedings is derived from statute rather than the Constitution. *People v. Owens*, 139 Ill. 2d 351, 364 (1990). Thus, postconviction petitioners are guaranteed only the level of assistance which the statute provides. *Id.* That level of assistance has been defined by the Illinois Supreme Court to mean a “reasonable” level of assistance. *People v. Flores*, 153 Ill. 2d 264, 276 (1992). One aspect of “reasonable” assistance is compliance with Illinois Supreme Court Rule 651(c). *People v. Carter*, 223 Ill. App. 3d 957, 961 (1992). An attorney’s compliance with Rule 651(c) is reviewed *de novo*. *People v. Profit*, 2012 IL App (1st) 101307, ¶ 17.

¶ 18 Rule 651(c) imposes three duties on appointed postconviction counsel. *People v. Perkins*, 229 Ill. 2d 34, 42 (2007). Pursuant to the rule, postconviction counsel must show that he (1) consulted with the petitioner to ascertain his contentions of constitutional deprivations, (2) examined the record of the trial proceedings, and (3) made any amendments to the filed *pro se* petition necessary to adequately present the petitioner’s contentions. Ill. S. Ct. R. 651(c) (eff. Dec. 1, 1984). The purpose of the rule is to ensure that postconviction counsel shapes the defendant’s claims into a proper legal form and

presents them to the court. *Perkins*, 229 Ill. 2d at 44. Substantial compliance with Rule 651(c) is sufficient. *People v. Richardson*, 382 Ill. App. 3d 248, 257 (2008).

¶ 19 There are two ways in which appointed counsel may comply with Rule 651(c). Counsel may file a certificate to show that the requirements of the rule were complied with or the record as a whole may demonstrate that counsel complied with those provisions. *People v. Richmond*, 188 Ill. 2d 376, 380 (1999). A rebuttable presumption that postconviction counsel provided reasonable assistance exists where the Rule 651(c) certificate has been filed. *Profit*, 2012 IL App (1st) 101307, ¶ 19. The defendant bears the burden to overcome this presumption by demonstrating that his counsel failed to substantially comply with the requirements of Rule 651(c). *Id.* Where postconviction counsel has failed to fulfill the duties required of Rule 651(c), the Illinois Supreme Court has consistently held that remand is required regardless of whether the claims raised in the petition had merit. *People v. Suarez*, 224 Ill. 2d 37, 47 (2007).

¶ 20 In the present case, the defendant's postconviction counsel was granted leave to supplement the record on appeal with a Rule 651(c) certificate. Thus, there is a rebuttable presumption that postconviction counsel provided reasonable assistance and it is the defendant's burden to overcome this presumption.

¶ 21 Defendant maintains that he has rebutted the presumption of substantial compliance because the record does not affirmatively show that counsel had consulted with defendant to ascertain his contentions of constitutional deprivations or that postconviction counsel had examined the record of the trial proceedings. We disagree.

¶ 22 The record reflects that on December 29, 2010, the court issued an order indicating that “[d]efendant appears from D.O.C. and consults with attorney Hale.” Similar orders indicating that defendant consulted with postconviction counsel were issued on January 26, 2011; April 27, 2011; September 28, 2011; November 16, 2011; October 10, 2012; January 16, 2013; June 26, 2013; September 18, 2013; May 28, 2014; and July 30, 2014. There is also postconviction counsel’s representation to the circuit court at the conclusion of the evidentiary hearing that he had been conferring with the defendant since December 2010, regarding defendant’s claims.

¶ 23 Defendant acknowledges that the record reflects that postconviction counsel consulted with defendant in “some manner”; however, defendant argues that the record does not explicitly show that the consultations pertained to defendant’s contentions of constitutional deprivations. Defendant cites to *People v. Seidler*, 18 Ill. App. 3d 705, 708 (1974), which held a single letter from postconviction counsel to defendant concerning an issue other than defendant’s contentions of constitutional deprivation did not meet the Rule 651(c) consultation requirement; *People v. Henderson*, 215 Ill. App. 3d 24, 26 (1991), which held that a single statement from postconviction counsel stating he had consulted with the defendant was insufficient to show compliance with Rule 651(c); and *People v. Johnson*, 338 Ill. App. 3d 1004, 1009 (2003), where the court found that postconviction counsel had only spoken to the defendant once by telephone and thus failed to comply with Rule 651(c).

¶ 24 Unlike the cases cited above, the record in this matter clearly shows numerous, in-person consultations between the defendant and postconviction counsel. Further, there is

nothing in the record or in defendant's briefs that indicate that the consultations pertained to anything other than defendant's contentions of constitutional deprivation. As such, the record demonstrates that postconviction counsel complied with the consultation requirement of Rule 651(c).

¶ 25 Defendant next argues that the record does not show that postconviction counsel had examined the record of the trial proceedings. Again, we disagree. The record indicates that postconviction counsel received defendant's file on December 6, 2010, and that he was provided the pending petitions on December 29, 2010. The record further reflects that postconviction counsel received the transcript of the stipulated bench trial and the record of proceedings on January 26, 2011, and the appeal record on February 4, 2011.

¶ 26 After receiving the records, postconviction counsel filed an amended petition and a second amended petition. Besides clarifying several of defendant's *pro se* claims, postconviction counsel added additional claims to both the amended and second amended postconviction petitions. It would have been extremely difficult for counsel to have raised these additional claims without having examined the records of the proceedings of the stipulated bench trial and the record on appeal. Rule 651(c) only requires postconviction counsel to examine as much of the record as necessary to adequately present and support the constitutional claims raised by the defendant. Postconviction counsel may conduct a broader examination of the record, but there is no obligation to do so. *Pendleton*, 223 Ill. 2d at 475-76.

¶ 27 Defendant also argues that postconviction counsel’s failure to present and argue facts in support of all claims raised in the postconviction petition at the evidentiary hearing supports his position that postconviction counsel could not have reviewed the entire trial proceedings. According to defendant, “at the evidentiary hearing, counsel only argued facts pertaining to Mr. Haynes’ confusion regarding the stipulated bench trial and jury waiver, and that Mr. Haynes’ stipulated bench trial was tantamount to a guilty plea.” However, a review of the evidentiary hearing record reflects that postconviction counsel addressed more issues than the two cited above. As such, we find that the record is sufficient to support the determination that postconviction counsel reviewed the record of proceedings as required by Rule 651(c).

¶ 28 Finally, defendant states that “because nothing in the record explicitly shows that post-conviction counsel had reviewed the entire trial proceedings, counsel could not possibly have amended the petition as required by Rule 651(c).” Postconviction counsel filed an amended *and* a second amended petition, and defendant fails to state how these amendments fell short of Rule 651(c). As such, we find that postconviction counsel complied with the amendment requirement of Rule 651(c).

¶ 29 At the end of evidentiary hearing, the circuit court questioned postconviction counsel and found that postconviction counsel complied with Rule 651(c). Postconviction counsel filed a Rule 651(c) certificate as a supplement to the record on appeal, and the record as a whole demonstrates that postconviction counsel complied with the provisions of Rule 651(c). Therefore, we find that postconviction counsel fully complied with the requirements of Rule 651(c).

¶ 30 II. Whether Postconviction Counsel Provided a Reasonable Level of Assistance at the Third Stage Evidentiary Hearing

¶ 31 The next issue defendant raises on appeal is whether, regardless of postconviction counsel's compliance with Rule 651(c), postconviction counsel provided a reasonable level of assistance at the third stage evidentiary hearing. Specifically, defendant states that postconviction counsel did not present any evidence in support of defendant's contentions of constitutional deprivations, attached no valid affidavits or other records to the amended or second amended petitions, failed to explain the absence of supporting documentation, and did not explain how trial counsel's failure prejudiced the defendant.

¶ 32 As an initial matter, the State has indicated that it disagrees with defendant's stated *de novo* standard of review for the reasonableness of postconviction counsel's assistance at the third stage evidentiary hearing. The State sets out that a trial court's decision to deny relief following a third stage evidentiary hearing is reviewed for manifest error. *People v. Coleman*, 2013 IL 113307, ¶ 98. The State is correct that on appeal from a trial court's denial of a petition for postconviction relief after a third stage evidentiary hearing, we review the denial for manifest error. *Id.* This standard of review recognizes that “ ‘we must give great deference to the trial court's factual findings because the trial court stands in the best position to weigh the credibility of the witnesses’ ” who testify at the third stage evidentiary hearing. *People v. Hotwagner*, 2015 IL App (5th) 130525, ¶ 31 (quoting *In re Floyd*, 274 Ill. App. 3d 855, 867 (1995)).

¶ 33 However, the trial court's decision to deny defendant's postconviction petition is not at issue in this appeal. The issue is whether postconviction counsel provided the

defendant a reasonable level of assistance at the third stage evidentiary hearing. Unlike ineffective assistance of trial or appellate counsel, the reasonableness of postconviction counsel's level of assistance at the third stage can only be address for the first time on appeal because there is no procedure for raising the issue at the trial court level. When ineffective assistance of trial or appellate counsel is appealed, there often has been some review by the circuit court, either in the context of a posttrial motion or a ruling in a postconviction proceeding. Because there are no findings of the circuit court concerning postconviction counsel's conduct at the third stage, there can be no deference to the circuit court's findings or review under the standard of manifest error concerning the reasonableness of postconviction counsel's assistance at the third stage evidentiary hearing.

¶ 34 This court has found that trial counsel and postconviction counsel serve different roles and that the reasonable level of assistance required under the Act is not coextensive with the level of assistance required of trial counsel under *Strickland v. Washington*, 466 U.S. 668 (1984). *Hotwagner*, 2015 IL App (5th) 130525, ¶ 37. However, this court has further found that the *Strickland* standard that governs trial and plea counsel serves as a point of comparison, and it “stands to reason that if postconviction counsel's performance cannot be deemed deficient under *Strickland*, it cannot be said that counsel failed to provide the reasonable level of assistance required under [the lesser standard of] the Act.” *Id.*

¶ 35 In analyzing a claim of ineffective assistance of trial counsel under *Strickland*, this court defers to the trial court's findings of fact unless they are against the manifest weight

of the evidence, but we assess the ultimate legal question of whether counsel was ineffective *de novo*. *People v. Manoharan*, 394 Ill. App. 3d 762, 769 (2009). We find this bifurcated standard to also be an appropriate review standard for the reasonableness of postconviction counsel’s level of assistance at the third stage of a postconviction proceeding.

¶ 36 We further note that under the *Strickland* standard, a defendant is required to prove “(i) that his attorney’s performance fell below an objective standard of reasonableness, as measured by reference to prevailing professional norms, and (ii) that the substandard representation so prejudiced defendant that there exists a reasonable probability that, absent the errors, the outcome would have been different.” *People v. West*, 187 Ill. 2d 418, 432 (1999).

¶ 37 “A reviewing court evaluates the reasonableness of counsel’s conduct from his perspective in light of the totality of the circumstances in the case” (*People v. Tucker*, 2017 IL App (5th) 130576, ¶ 54), and “[a] defendant is entitled to competent, not perfect, representation, and mistakes in trial strategy or judgment will not, of themselves, render the representation ineffective” (*id.* ¶ 26).

¶ 38 Defendant claims that postconviction counsel provided unreasonable assistance of counsel at the third stage evidentiary hearing when he failed to support defendant’s claim concerning ineffective assistance of trial counsel and appellate counsel. Specifically, defendant claims that postconviction counsel’s level of assistance was unreasonable for (1) not calling Courtney Buckney, Donita Haynes, Christopher Young, Dr. Raj Nanduri, and appellate counsel to testify at the third stage hearing; (2) not providing transcripts,

documents, or affidavits in support of the claims that pertained to the documents; (3) failing to demonstrate or argue how defendant was prejudiced by ineffective assistance of trial counsel; and (4) postconviction counsel's lack of knowledge of the rules of evidence if he was relying on the unsworn affidavits because postconviction counsel should have been aware that the documents did not have evidentiary value because they were not notarized.

¶ 39 It is well settled that decisions concerning what evidence to present or which witnesses to call on behalf of a defendant ultimately rest with counsel. *West*, 187 Ill. 2d at 432. These types of decisions relate to strategy and are generally immune from claims of ineffective assistance of counsel. *Id.* “The only exception to this rule is when counsel’s chosen trial strategy is so unsound that ‘counsel entirely fails to conduct any meaningful adversarial testing.’ ” *Id.* at 432-33 (quoting *People v. Guest*, 166 Ill. 2d 381, 394 (1995)).

¶ 40 Defendant states that failing to call the above witnesses at the evidentiary hearing was unsound strategy because postconviction counsel failed to establish that there existed exculpatory witnesses and evidence. According to the defendant, “post-conviction counsel failed to indicate how these witnesses and evidence would have been helpful, and that trial counsel’s decision not to present the evidence was unsound.”

¶ 41 A review of the record indicates that on direct examination, defendant gave testimony concerning Courtney Buckney, Donita Haynes, Christopher Young, and Dr. Raj Nanduri and why they should have been called at the jury trial. Testimony is “[e]vidence that a competent witness under oath or affirmation gives at trial or in an

affidavit or deposition.” Black’s Law Dictionary 1613 (9th ed. 2009). Therefore, postconviction counsel did provide evidence on how defendant believed these witnesses may have testified if called at trial and why defendant believed trial counsel’s decision not to call them was unsound.

¶ 42 However, as the State notes, trial counsel’s decision concerning what evidence and witnesses to present at trial was circumvented by defendant’s decision to proceed with a stipulated bench trial. During cross-examination at the evidentiary hearing, the defendant testified that he was not aware that his trial counsel had filed a list of 42 witnesses identified to be called at the jury trial. Those witnesses became moot when defendant stipulated to the evidence at the stipulated bench trial.

¶ 43 Defendant now argues that postconviction counsel should have called these witnesses at the evidentiary hearing in order to demonstrate why they should have been called at the jury trial. What witnesses would or should have been called if defendant had proceeded with the jury trial is speculation and would have been determined by defendant’s trial counsel based on the evidence presented by the prosecution.

¶ 44 “In establishing substandard performance, the defendant must overcome the strong presumption that his attorney’s actions were the product of sound trial strategy and not incompetence.” *Tucker*, 2017 IL App (5th) 130576, ¶ 26. Considering that defendant proceeded to a stipulated bench trial before any defense witnesses could be called, we cannot state that postconviction counsel’s focus on issues concerning defendant’s understanding of the stipulated bench trial was unsound strategy.

¶ 45 Defendant also gave testimony concerning his appellate counsel and fails to state how calling defendant's appellate counsel to testify would have supported defendant's postconviction claims or resulted in a different outcome of the evidentiary hearing. As such, we cannot state that postconviction counsel's failure to call Courtney Buckney, Donita Haynes, Christopher Young, Dr. Raj Nanduri, and appellate counsel to testify at the third stage hearing fell short of reasonable assistance.

¶ 46 Defendant also claims that postconviction counsel's assistance was unreasonable because postconviction counsel failed to provide transcripts, documents, or affidavits in support of the claims that pertained to the documents. During the evidentiary hearing, postconviction counsel referred to the affidavits and exhibits filed with the defendant's *pro se* petition and supplemental petition. After defendant's initial testimony, the circuit court allowed the defendant and postconviction counsel an opportunity to discuss the exhibits and then allowed the defendant to retake the stand for questions from postconviction counsel prior to cross-examination. Further, during cross-examination, defendant stated that it would be fair to say that the court could defer to the affidavits and exhibits filed with his *pro se* and supplemental petitions. Finally, the circuit court's order denying defendant postconviction relief states that, "inquiry was made at the close of the hearing, and [d]efendant stated that it was not necessary to return at a later date for more testimony or evidence."

¶ 47 Defendant did not indicate to the circuit court that there were any additional transcripts, documents, or affidavits in support of his claims. Defendant has also failed to identify to this court any additional transcripts, documents, or affidavits that

postconviction counsel could have submitted at the evidentiary hearing. As such, we cannot find that postconviction counsel's failure to provide transcripts, documents, or affidavits in support of the claims that pertained to the documents fell short of reasonable assistance when defendant failed to identify what transcripts, documents, or affidavits in support of what claims postconviction counsel should have submitted.

¶ 48 Next, defendant argues that postconviction counsel failed to demonstrate or argue how defendant was prejudiced by ineffective assistance of trial counsel. We disagree. In his examination of defendant, postconviction counsel elicited testimony that demonstrated that defendant was not aware he was waiving certain rights by agreeing to the stipulated bench trial. Postconviction counsel also argued in his closing argument that defendant would not have agreed to a stipulated bench trial if he had been fully informed and as such, defendant was entitled to a new trial. Although postconviction counsel never stated the word "prejudiced," there is no requirement that counsel specifically state "my client was prejudiced by \*\*\*." We find that postconviction counsel's level of assistance in arguing that defendant was prejudiced by the alleged errors of his trial counsel was sufficient at the third stage hearing and did not fall short of reasonable assistance.

¶ 49 Finally, defendant's argument that postconviction counsel provided an unreasonable level of assistance at the third stage hearing because he lacked knowledge of the rules of evidence is moot. Illinois Rule of Evidence 1101(b)(3) provides that the rules of evidence are not applicable to postconviction hearings. Ill. R. Evid. 1101(b)(3) (eff. Jan. 6, 2015).

¶ 50 Ineffective assistance is more than the failure of a tactical choice which has been highlighted by the clarity of hindsight. *People v. Palmer*, 31 Ill. 2d 58, 66 (1964). After reviewing the record of the third stage evidentiary hearing, we conclude defendant's postconviction counsel provided a reasonable level of assistance by having defendant testify on the issues raised in defendant's postconviction petition and that postconviction counsel's arguments were adequate, cogently advocating defendant's claims, and that his efforts on behalf of the defendant were reasonable.

¶ 51 Based on the above, we find that defendant has not established that postconviction counsel's level of assistance at the third stage evidentiary hearing was unreasonable. Having found that postconviction counsel did not render unreasonable representation, we need not address any substantial prejudice to the defendant.

¶ 52 **CONCLUSION**

¶ 53 For the foregoing reasons, we affirm the circuit court's order denying defendant's postconviction petition.

¶ 54 Affirmed.