

21-7145
No. 06 Cl 60362

Supreme Court, U.S.
FILED

DEC 06 2021

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1-17-0671

IN THE
SUPREME COURT OF THE UNITED STATES

Kevin Hall — PETITIONER
(Your Name)

vs.
People State of Illinois — RESPONDENT(S)

ON PETITION FOR A WRIT OF CERTIORARI TO

Supreme Court of Illinois
(NAME OF COURT THAT LAST RULED ON MERITS OF YOUR CASE)

PETITION FOR WRIT OF CERTIORARI

Kevin Hall
(Your Name)

2000 N. Brighton Ave
(Address)

Dixon IL 61021
(City, State, Zip Code)

815-288-5561
(Phone Number)

ORIGINAL

I.

QUESTION(S) PRESENTED

1. Did Hall's prose post-conviction motion raise several Consider issues, one which his Trial Counsel fail to investigate and obtain exculpatory evidence before Dispersing Ready for Trial.
2. Did the Trial Judge render Hall's Court appointed Counsel ineffective by denying his Counsel a Continuance to Subpoena and obtain Victims medical Records from The Gary Indiana Health department where The Victim, and The Victims mother and mother's partner Tested positive for The Same Strains of Sexual Transmitted Diseases Hall who was Court ordered Twice Tested negative The Victim Tested positive for Chlamydia is material information that could potentially exculpate Hall. Since Hall was Tested for Chlamydia and Tested negative Twice.
3. Did The Trial Judge and State prosecution denied Hall due process of Law, by rendering and Suppression of exculpatory evidence that they Collectively know existed.
4. Did Hall's post-conviction Court appointed Counsel provide an unreasonable level of assistance where Counsel failed to amend Hall's prose post-conviction motion filed in any way or argued issues that were not pled and did not provide any evidentiary support for Hall's Claims.
5. Did Hall's post-conviction Court appoint Counsel failed to do the most basic steps to properly present even a single issue and refused Hall's Request to file a motion to Compel The post-conviction Judge to Subpoena release Thiern's medical Records from The Gary Indiana's Health department Clinic which would have secured the exculpatory evidence for a new and fair Trial.

LIST OF PARTIES

- [] All parties appear in the caption of the case on the cover page.
- [✓] All parties do not appear in the caption of the case on the cover page. A list of all parties to the proceeding in the court whose judgment is the subject of this petition is as follows:

People State of Illinois

Nelusa Thielen

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TABLE OF AUTHORITIES CITED

CASES

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Statutes and Rules	
Article VI	
This Constitution, and The Laws of The United States which shall be made in pursuance thereof... under The Authority of The United States, shall be The Supreme Law of The Land, and The Judges in every State shall be bound thereby...	

OTHER

Amendment VI

The defendant could make out a Sixth Amendment claim of Intellectual Assistance of Counsel only by pointing to specific errors by his Counsel.

IN THE
SUPREME COURT OF THE UNITED STATES

PETITION FOR WRIT OF CERTIORARI

Petitioner respectfully prays that a writ of certiorari issue to review the judgment below.

OPINIONS BELOW

☐ For cases from federal courts:

The opinion of the United States court of appeals appears at Appendix _____ to the petition and is

- ☐ reported at _____; or,
☐ has been designated for publication but is not yet reported; or,
☐ is unpublished.

The opinion of the United States district court appears at Appendix _____ to the petition and is

- ☐ reported at _____; or,
☐ has been designated for publication but is not yet reported; or,
☐ is unpublished.

☒ For cases from state courts:

The opinion of the highest state court to review the merits appears at Appendix A-1 to the petition and is

- ☐ reported at _____; or,
☒ has been designated for publication but is not yet reported; or,
☐ is unpublished.

The opinion of the Appellate court appears at Appendix A-2 to the petition and is

- ☐ reported at _____; or,
☒ has been designated for publication but is not yet reported; or,
☐ is unpublished.

JURISDICTION

☐ For cases from federal courts:

The date on which the United States Court of Appeals decided my case was _____.

☐ No petition for rehearing was timely filed in my case.

☐ A timely petition for rehearing was denied by the United States Court of Appeals on the following date: _____, and a copy of the order denying rehearing appears at Appendix _____.

☐ An extension of time to file the petition for a writ of certiorari was granted to and including _____ (date) on _____ (date) in Application No. A _____.

The jurisdiction of this Court is invoked under 28 U. S. C. § 1254(1).

☒ For cases from state courts:

The date on which the highest state court decided my case was Sept 29th 2021.
A copy of that decision appears at Appendix 3.

☒ A timely petition for rehearing was thereafter denied on the following date: November 31 2021, and a copy of the order denying rehearing appears at Appendix 6.

☐ An extension of time to file the petition for a writ of certiorari was granted to and including _____ (date) on _____ (date) in Application No. A _____.

The jurisdiction of this Court is invoked under 28 U. S. C. § 1257(a).

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

The defendant did not receive a fair and impartial trial as guaranteed him under The Constitution of The State of Illinois (1970) and under The fourteenth Amendment of The Constitution of The United States

The defendant's Court appointed Counsel, in his trial and post-conviction was ineffective and failed to secure exculpatory evidence, The Victims Health Department's medical records and result of Sexual transmitted disease testing.

STATEMENT OF THE CASE

¶ 1 Following a second jury trial (the first ended in a mistrial after a hung jury), defendant

Kevin Hall was convicted of predatory criminal sexual assault of his 10-year-old stepdaughter, N.T. and was sentenced to 26 years' imprisonment. In this timely appeal, defendant contends that he is entitled to a new trial because, *inter alia*, the lower court erred by denying him a continuance in order to fully prepare and investigate a potential medical defense, by allowing a medical witness to express her personal "heartbreak" at the results of her physical examination of the victim and by allowing the State to improperly argue various matters in closing argument. We affirm.

¶ 2

BACKGROUND

¶ 3 In 2006, defendant lived in an apartment in Robbins, Illinois, with his wife, Tomasenia, their daughter Ka. T., and Tomasenia's two daughters from another relationship, N.T. and Ke. T. The State alleged that defendant had anal intercourse with N.T. on March 3, 2006, in her bedroom, an event that was initially denied by the victim when confronted by her mother. Nine days after this alleged occurrence, the child told her mother that her stepfather had put his "penis" into her "butt." Tomasenia's sister took N.T. to the hospital that evening. Several days later, at a detective's urging, N.T. was seen by Dr. Sangita Rangala, a physician who specializes in sexual abuse cases, at Edward Hospital in Naperville. At that visit, Dr. Rangala's examination of the young girl revealed signs and symptoms of anal sexual abuse and trichomonas, a sexually transmitted infection.

¶ 4 On the day that the retrial was scheduled to begin, with both parties having answered ready for trial and with the jury literally in the hallway outside the courtroom, defense counsel moved for a continuance to investigate whether the minor victim N.T. had been tested for chlamydia, a sexually transmitted disease. Defense counsel argued that it had received

information from Tomasenja indicating that N.T. had been diagnosed with three sexually transmitted diseases, including chlamydia. Defense counsel maintains that Tomasenja admitted that both she and the man she was then involved with tested positive for chlamydia, while defendant had tested negative for the disease. During a subsequent telephone conversation, defense counsel claimed that Tomasenja could not remember where the testing for N.T. was done, only that it was done in Gary, Indiana, and that Detective Jamison would have the exact location. Defense counsel contended that defendant's right to a fair trial would be compromised if he were not allowed a continuance to further investigate the matter. The court denied this motion, noting that counsel had answered ready for trial and had been given plenty of time before trial to investigate this specific allegation.

15 At trial, N.T. testified that she lived with her siblings, her mother and defendant, who was her stepfather. She testified that at approximately 3:00 p.m. on March 3, 2006 she returned from school with Ke. T. to an empty home. Two hours later, she and Ke. T. were in their bedroom when defendant returned from work, entered his bedroom, and began playing video games. Soon thereafter, defendant entered the girls' bedroom wearing only boxer shorts and told Ke. T. to go into his bedroom to play video games. N.T. testified that once her sister was out of the room, defendant removed N.T.'s pants and underwear, laid her across the bed, "put his penis in my butt" and began moving "up and down." This was interrupted when Ke. T. yelled from defendant's bedroom, "mama is home." Defendant "jumped up" and went to the hallway. Her mother then entered the girls' bedroom, approached N.T. and pulled off the blanket that was covering N.T.'s lower half, revealing that she was naked from the waist down. N.T. testified that she told her

mother that "nothing" had happened when questioned, because she was scared that defendant might hurt her mother, based on warnings from defendant on earlier occasions when this same abuse had occurred. N.T. acknowledged that she waited until nine days later to tell her mother what happened. At that time, N.T. told her mother that defendant had abused her in a similar fashion on at least five previous occasions.

¶ 6 Tomasenia testified that on March 3, 2006, she went with her father, stepmother and daughter, Ka. T., to purchase a car in Lansing, Illinois. She returned to the apartment around 7:30 p.m and immediately noticed Ke. T. playing a video game. Tomasenia walked down the hallway and saw defendant leaving the girls' bedroom, clad only in boxer shorts and a T-shirt. Tomasenia made eye contact with defendant, prompting him to volunteer that he was not "doing anything" and that he just "got after" N.T. for walking around in the nude. Defendant then went to the bathroom, while she entered the girls' bedroom and saw N.T. sitting on a bed wearing a shirt with a blanket draped across her legs. The girl appeared to have tears in her eyes.

Tomasenia asked N.T. what was wrong and N.T. said that she had hit her head. Tomasenia then asked N.T. to come downstairs to look at the new car, but N.T. would not immediately get out of the bed, prompting Tomasenia to pull the covers off her daughter's lap, revealing that the child was naked below the waist.

¶ 7 N.T. then accompanied her mother for a ride in the new car and it was upon their return that mother took child to the bathroom and examined her, noticing moisture near her vagina and anus. Tomasenia testified that for the next week, she continued to ask N.T. what happened, often asking N.T. if Kevin was "messaging" with her. Finally, on March 12, in a lengthy conversation,

N.T. told Tomasenia what had occurred on March 3.

¶ 8 Following that conversation, Tomasenia phoned her sister and asked her to bring N.T. to a local hospital for treatment. Tomasenia testified that she did not take the child herself, because she feared defendant finding out. Tomasenia telephonically gave her permission for the hospital to examine N.T. Although Tomasenia did not initiate contact with the police, she did receive a telephone call from Detective Jamison and related her daughter's accusation. Tomasenia stated that on the detective's recommendation, she subsequently brought N.T. to Edward Hospital on March 17, where her daughter underwent a complete physical examination by a physician specializing in sex abuse cases.

¶ 9 Diane S. testified that she had two children with defendant and that their relationship ended many years earlier. She also has another child, J.S., who is approximately two years older than N.T. Diane testified that, despite the fact that her relationship with defendant ended many years earlier, she maintained contact with him and that she occasionally was a babysitter for Tomasenia's three daughters. Diane's testimony was significant mostly because of two conversations she had with defendant after he had been arrested for assaulting N.T. She received a telephone call from defendant just after he was released from jail following his arrest for the alleged assault of N.T. Defendant told her that he had just been arrested after being accused of molesting N.T., and specifically asked her whether she thought it was "possible" that J.S. was having sex with N.T. Diane replied that would be "impossible" because she was always present when N.T. and J.S. were together.

¶ 10 Diane also testified that defendant subsequently came to her home, laid on her couch and

demonstrated his version of what had occurred on the evening that N.T. alleged that she was assaulted by him. Defendant said that he was in his room after coming home from work, and had taken off all of his clothes except for his T-shirt and boxers. He explained that he was doing stomach exercises, with the girls "helping" him by sitting on his stomach. Diane testified that defendant then explained that N.T. got on his stomach, "grabbed his penis, and tried to stick it in her anus, and he slapped her." This testimony prompted the State to impeach Diane with her grand jury testimony which was somewhat different. There, she testified under oath that defendant told her that the child started "grinding" against him and that she herself grabbed his "penis out of his boxers and put it inside of her vagina, and then took it out of her vagina and put it in her anus."

¶ 11 Diane's testimony was further clouded during cross-examination. Defense counsel attempted to further its theory that Diane was testifying truthfully before the jury, but was lying during her grand jury testimony after being pressured by Detective Jamison. Diane, however, initially denied that Detective Jamison "pressured her" about how to testify at the grand jury. Defense counsel then confronted Diane with her testimony from the first trial, where she admitted that she testified differently at the grand jury because "Jamison was pressuring me to say things." Ultimately, Diane explained that Jamison's alleged influence upon her had occurred at her home and not while in the car on the way to the grand jury.

¶ 12 On redirect, Diane testified that defendant told her N.T. only "tried" to put defendant's penis in her anus and that the testimony she gave before the grand jury "came out of [her] mouth," but "they was [sic] Detective Jamison's words."

¶ 13. Dr. Rangala, an expert in the field of pediatric sexual trauma, examined N.T. at Edward Hospital approximately two weeks after the alleged assault. Her physical examination included a head-to-toe exam similar to one which might occur at a pediatrician's office, but she also performed a detailed examination of the child's genitalia. Dr. Rangala explained that she purposefully brushed her hand near the victim's anus and that it spontaneously dilated, which the doctor explained was remarkably unusual in a child. She testified that it is contrary to the natural reflex which tightens the sphincter muscle around the anal opening. She opined that this was a sign of sexual abuse because the child had essentially trained herself to relax her sphincter muscle in order to minimize pain encountered with penetration.

¶ 14. After the testimony about the particulars of the examination of the child's anal area, the prosecutor rather deliberately tried to elicit the doctor's "reaction" to the examination. A defense objection was sustained. The next question asked for the doctor's "response" to the examination. A defense objection was again sustained. The third, nearly identical, question asked Dr. Rangala "what did you think?" The question was allowed to stand despite another objection. The expert witness immediately responded, "I thought it was awful," and later in the long, narrative answer, Dr. Rangala stated that "when you see a child who dilates their sphincter just from the touch of the hand to the outside, it is actually is [sic] heartbreaking. It is not normal." Finally, Dr. Rangala readily acknowledged that she was unable to identify the offender in any way.

¶ 15. Following the close of the State's case, defendant rested without presenting any evidence. Defendant was convicted of predatory criminal sexual assault and was sentenced to 26 years in prison.

REASONS FOR GRANTING THE PETITION

Post-conviction counsel provided an unreasonable level of assistance in violation of Illinois Supreme Court Rule 651(c) where counsel failed to amend the *pro se* petition, argued unpled issues, and failed to attach any affidavits or other evidence in support of the claims.

Kevin Hall filed a *pro se* post-conviction that raised several issues, at least one of which – trial counsel's failure to investigate and obtain records detailing N.T.'s treatment for a sexually transmitted disease before answering ready for trial – required additional evidence of facts *de hors* the record. Yet, when counsel was appointed, he did not amend the *pro se* claims in any way, and he did not support the claims with any affidavits or other documentation. Counsel's failure to properly amend the *pro se* claims precluded consideration of Kevin's claims on the merits and directly contributed to the dismissal of the petition without an evidentiary hearing. Counsel therefore deprived Kevin of the reasonable assistance of counsel prescribed by Illinois Supreme Court Rule 651(c). As such, this Court must vacate the dismissal of Kevin's post-conviction petition and remand this cause for the appointment of new counsel to represent him at renewed second-stage proceedings.

The question of whether counsel provided reasonable assistance in compliance with Rule 651(c) is reviewed *de novo*. *People v. Suarez*, 224 Ill. 2d 37, 41-42 (2007).

Pursuant to the Post-Conviction Hearing Act (the Act), an indigent post-conviction petitioner whose petition is not summarily dismissed is entitled to appointed counsel. 725 ILCS 5/122-4 (2017). Because such representation is a statutory right rather than a constitutional one, the petitioner is entitled only to the standard of representation required by the Act, which the Illinois Supreme Court has defined as a "reasonable" level of assistance. *People v. Perkins*, 229 Ill.

2d 34, 42 (2008).

To ensure such reasonable assistance, Supreme Court Rule 651(c) requires that post-conviction counsel: (1) consult with the petitioner either by mail or in person to ascertain his constitutional claims; (2) examine the record of the trial court proceedings; and (3) make any amendments to the *pro se* petition necessary to adequately present the petitioner's claims. Ill. Sup. Ct. R. 651(c); *Perkins*, 229 Ill.2d at 42; *People v. Turner*, 187 Ill. 2d 406, 410 (1999). If counsel fails to fulfill any one of these requirements, "remand is required... regardless of whether the claims raised in the petition had merit." *Suarez*, 224 Ill. 2d at 47; *see also People v. Johnson*, 154 Ill. 2d 227, 246 (1993) (reviewing courts "cannot simply presume ... that the trial court would have dismissed the petition without an evidentiary hearing if counsel had adequately performed his duties"). Even where an attorney has filed a certificate attesting to compliance with Rule 651(c), such a certificate is not conclusive proof of compliance and may be rebutted by the record. *Perkins*, 229 Ill. 2d at 52; *People v. Schlosser*, 2012 IL App (1st) 092523, ¶33.

Under Rule 651(c), post-conviction counsel has "an obligation to present the defendant's post-conviction claims to the court in appropriate legal form." *Johnson*, 154 Ill. 2d at 245. This obligation requires post-conviction counsel "to attempt to obtain evidentiary support for claims raised in the post-conviction petition." *Johnson*, 154 Ill. 2d at 245. Assertions which amount to conclusions are insufficient to require a hearing under the Act. *People v. Burt*, 205 Ill. 2d 28, 35-36 (2001). When allegations in the defendant's petition are "not supported by affidavits, records or other evidence, the trial court [has] no choice but to dismiss the post-conviction petition without an evidentiary hearing." *Johnson*, 154 Ill.

2d at 245.

Here, post-conviction counsel failed to perfect Kevin's *pro se* claims by failing to amend the petition into a proper legal form and failing to attach appropriate documentary support. By not amending the petition, counsel failed to provide the court with "an adequate presentation of [Kevin's] contentions." Ill. Sup. Ct. Rule 651(c). "To ensure that the complaints of a prisoner might be adequately presented, [Rule 651(c)] contemplates that the attorney appointed to represent an indigent petitioner will ascertain the basis of the petitioner's complaints, shape those complaints into appropriate legal form[,] and present the prisoner's constitutional contentions to the court." *Johnson*, 154 Ill. 2d at 237-38. Here, there was no shaping or presentation of Kevin's complaints into the proper legal form, as evidenced by the arguments during the State's motion to dismiss.

The court sustained the State's objections to Kevin's attorney's attempts at arguing both ineffective assistance of appellate counsel and actual innocence on the grounds that neither issue was pled in the *pro se* petition. Because counsel did not amend the petition to include those claims, the court could not consider the merits of the claims. *See* 725 ILCS 5/122-3 (2017) (any claim not raised in the original or an amended petition is waived), *Turner*, 187 Ill. 2d at 413 (counsel's failure to amend a post-conviction petition to allege ineffective assistance of appellate counsel violated Rule 651(c)). In other words, counsel failed at the basic task of even pleading the arguments he was presenting. This was clearly not the "adequate presentation" that Rule 651(c) requires.

Even for the claims that were pled in the *pro se* petition, counsel failed to provide the documentary support required for an adequate presentation of such

claims. Specifically, Kevin alleged ineffective assistance for trial counsel's failure to obtain medical records relating to N.T.'s diagnosis and treatment for chlamydia at a clinic in Gary, Indiana. (PC C. 258-59). The record shows that trial counsel did indeed fail to obtain those records, and moved to continue the trial on grounds that the records could prove exculpatory. (R. 1488-90, C. 112). The request for continuance was denied because counsel had known about this possible evidence for well over a year, counsel had answered ready for trial, and jury selection was about to begin. (R. 1490-92).

In his petition, Kevin stated that trial counsel was ineffective for not obtaining the documents and, at the same time, answering ready for trial. (PC C. 258-59). Claims of ineffective assistance are governed by the standard set forth in *Strickland v. Washington*, 466 U.S. 668 (1984). *People v. Albanese*, 104 Ill. 2d 504, 525-26 (1984) (adopting *Strickland*). To prevail on a claim of ineffective assistance of counsel, a defendant usually must demonstrate that counsel's performance was deficient and that the deficient performance prejudiced the defendant. *Strickland*, 466 U.S. at 687. More specifically, a defendant must show that counsel's performance was objectively unreasonable under prevailing professional norms and that there is a "reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different." *Id.* at 694.

Under the Sixth Amendment, counsel "has a duty to make reasonable investigations or to make a reasonable decision that makes particular investigations unnecessary." *Id.* at 691. Indeed, "strategic decisions may be made only after there has been a 'thorough investigation of law and facts relevant to plausible options.'" *People v. Gibson*, 244 Ill. App. 3d 700, 703-704 (4th Dist. 1993), quoting *Strickland*,

466 U.S. at 690.

Given the relevance of the evidence – N.T., her mother, and her mother's lover tested positive for chlamydia, while Kevin did not – the first prong of ineffective assistance was already evident from the record. Trial counsel's performance was deficient when she failed to obtain the relevant documents and nevertheless answered ready for trial. Thus, even without amending the petition, post-conviction counsel needed to supplement the record with evidence to support the claim that Kevin was prejudiced by trial counsel's actions. Ideally, post-conviction counsel would have subpoenaed the records himself and attached them to an amended petition. But the record is devoid of any attempts by post-conviction counsel to subpoena anything.

At a minimum, post-conviction counsel could have obtained an actual affidavit from Kevin. As the State pointed out in rebuttal at the hearing on the motion to dismiss, Kevin's signed statement could not be considered new evidence because it was not even notarized. (PC R. 94); *People v. Allen*, 2015 IL 113135, ¶ 35 ("Where a defendant's postconviction counsel is unable to obtain a properly notarized affidavit, the court may dismiss the petition upon the State's motion."). Restating the claims in a *pro se* petition, without investigating the claims and, if possible, attaching supporting documentation, does not rise to the level of reasonable assistance contemplated by Rule 651(c). See e.g., *People v. Nitz*, 2011 IL App (2d) 100031, ¶¶ 18-19; *People v. Treadway*, 245 Ill. App. 3d 1023, 1026-27 (2d Dist. 1993); *Turner*, 187 Ill. 2d at 416-17 (to tolerate representation where counsel did nothing to shape the petitioner's *pro se* claims into the appropriate legal form would render the appointment of counsel in post-conviction proceedings an "empty

formality”).

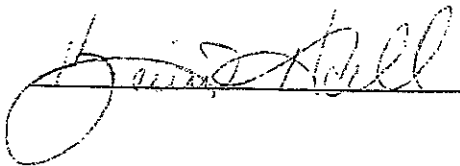
It is important to note that Illinois has consistently held that remand is required where post-conviction counsel fails to fulfill the duties required by Rule 651(c), regardless of whether the claims raised in the petition have merit. *Suarez*, 224 Ill. 2d at 47. In other words, there is no “harmless error” review for non-compliance with Rule 651(c). *Turner*, 187 Ill. 2d at 416. In determining whether post-conviction counsel provided reasonable assistance, the analysis has always been driven “not by whether a particular defendant’s claim is potentially meritorious, but by the conviction that where post-conviction counsel does not adequately complete the duties mandated by the rule, the limited right to counsel conferred by the Act cannot be fully realized.” *Suarez*, 224 Ill. 2d at 51; *Turner*, 187 Ill. 2d at 416 (“This court will not speculate whether the trial court would have dismissed the petition without an evidentiary hearing if counsel had adequately performed his duties under Rule 651(c).”). In other words, counsel’s failure here to both amend and support Kevin’s claims should be deemed unreasonable assistance regardless of the ultimate merits of the claims.

In sum, post-conviction counsel did not provide the reasonable level of assistance required by Rule 651(c). By taking no action whatsoever, counsel failed to properly preserve and perfect Kevin’s *pro se* claims, thus preventing the court from properly judging the merits of the claims. Accordingly, counsel’s assistance was unreasonable, and this Court must remand this cause for further second-stage proceedings, including the appointment of new counsel.

CONCLUSION

For the foregoing reasons, Kevin Hall, requests that this Court vacate the order granting the State's motion to dismiss his Post-Conviction Petition and remand the cause for the appointment of Counsel to represent him at second-stage proceeding consistent with Rule 651 (c). The Petition For Writ Of Certiorari should be granted.

Respectfully submitted,

A handwritten signature, appearing to read "Kevin Hall", is written over a horizontal line.

Date: _____