

APPELLATE COURT OF ILLINOIS, FIRST JUDICIAL DISTRICT

People v. Smith

2026 IL App (1st) 231635 · No. 1-23-1635 · Decided March 27, 2026

SUMMARY

The Illinois Appellate Court, First District, affirmed the dismissal of Kenneth Smith’s second-stage postconviction petition as untimely and procedurally barred. The majority held that postconviction counsel’s Rule 651(c) certificates created a presumption of reasonable assistance and that no available facts were shown to excuse the filing delay. Justice Oden Johnson dissented, concluding that counsel’s failures, including not attaching a verification affidavit or Office of Professional Standards report and not amending the petition, warranted remand for a new second-stage hearing.

CASE DETAILS

COURT	Appellate Court of Illinois, First Judicial District
WRITING FOR THE COURT	Presiding Justice Mitchell; Justice Mikva; Justice Oden Johnson
JURISDICTION	Illinois Appellate Court, First District
DECIDED	March 27, 2026
DOCKET	1-23-1635
DISPOSITION	affirmed
PROCEDURAL POSTURE	Defendant appealed the second-stage dismissal of his postconviction petition as untimely and procedurally barred, arguing that appointed postconviction counsel provided unreasonable assistance under Illinois Supreme Court Rule 651(c).
STANDARD OF REVIEW	De novo review applies to compliance with Illinois Supreme Court Rule 651(c) and to the second-stage dismissal of a postconviction petition.
PRECEDENTIAL VALUE	Published precedential opinion of the Appellate Court of Illinois, First District
PARTIES	Kenneth Smith v. The People of the State of Illinois

TOPICS

- state post-conviction relief
- post-conviction relief
- ineffective assistance
- criminal procedure
- appellate procedure

PRACTICE AREAS

Illinois postconviction proceedings

criminal procedure

appellate procedure

QUESTIONS PRESENTED

1. Whether postconviction counsel provided unreasonable assistance under Illinois Supreme Court Rule 651(c) by failing to amend Smith's untimely pro se petition to allege facts excusing the delay.
2. Whether alleged additional deficiencies by postconviction counsel warranted reversal despite the petition's untimeliness.
3. Whether the circuit court properly dismissed the postconviction petition as time-barred.

HOLDINGS

1. Postconviction counsel must amend an untimely pro se petition to allege available facts showing that the delay was not due to the petitioner's culpable negligence, but counsel does not provide unreasonable assistance when the record contains no available facts that could excuse the delay.
2. The postconviction petition was untimely because it was due no later than February 28, 2014, but was not filed until September 19, 2019, and Smith did not allege facts establishing that the delay was not caused by his culpable negligence.
3. The additional alleged deficiencies did not warrant reversal because they did not cause the circuit court's dismissal and could not provide a basis for relief in light of the dispositive time bar.

KEY QUOTATIONS

“the right to counsel is statutory, not constitutional, and a petitioner is entitled to “reasonable assistance” of counsel, a standard “significantly lower than the one mandated at trial by our state and federal constitutions.”” (¶ 14)

“requires counsel to amend an untimely pro se petition to allege any available facts necessary to establish that the delay was not due to the petitioner’s culpable negligence.” (¶ 21)

“Under the Act, a petitioner’s claims cannot be presented if they are untimely and the petitioner has not alleged facts showing the delay in filing was not due to his culpable negligence.” (¶ 25)

FACTUAL BACKGROUND

Smith was indicted for the stabbing death of his cousin, Will Venable, and pleaded guilty to one count of first-degree murder in exchange for a 25-year sentence and three years of mandatory supervised release. Before pleading guilty, he unsuccessfully moved to suppress statements to police, alleging Miranda violations, requests for counsel, and physical coercion by Area 2 detectives. He later pursued claims concerning the plea, mandatory supervised release, alleged police abuse, and alleged failures by plea counsel, eventually filing a postconviction petition in September 2019.

PROCEDURAL HISTORY

Smith pleaded guilty to first-degree murder in 2004 and received a 25-year sentence followed by three years of mandatory supervised release. After prior state and federal proceedings concerning his plea and mandatory supervised release admonishments, he filed a pro se postconviction petition in 2019. The circuit court advanced the petition to the second stage, appointed counsel, and dismissed the petition as time-barred and procedurally barred. The Illinois Appellate Court affirmed.

DISPOSITION

affirmed

CASES CITED

- People v. Smith, 365 Ill. App. 3d 356, 360 (2006)
- People v. Smith, 2013 IL App (1st) 111906-U, ¶¶ 12, 15
- Miranda v. Arizona, 384 U.S. 436 (1966)
- United States ex rel. Smith v. Lemke, No. 13 C 5982, 2014 WL 812075, at *3-*4 (N.D. Ill. Mar. 3, 2014)
- People v. Robinson, 2020 IL 123849, ¶ 39
- People v. Collins, 2021 IL App (1st) 170597, ¶ 31
- People v. Huff, 2024 IL 128492, ¶¶ 21, 24
- People v. Addison, 2023 IL 127119, ¶¶ 19-20, 25
- People v. Profit, 2012 IL App (1st) 101307, ¶ 19
- People v. Washington, 171 Ill. 2d 475, 489 (1996)
- People v. Reed, 2020 IL 124940, ¶¶ 48-49
- People v. Davis, 156 Ill. 2d 149, 164 (1993)
- People v. Bocclair, 202 Ill. 2d 89, 107-08 (2002)
- People v. Perkins, 229 Ill. 2d 34, 41, 49-51 (2007)
- People v. Cotto, 2016 IL 119006, ¶ 50
- People v. Torres, 2025 IL App (1st) 240332-U, ¶¶ 29-31
- People v. Barrow, 195 Ill. 2d 506, 519 (2001)
- People v. Del Vecchio, 105 Ill. 2d 414, 433 (1985)
- People v. Wrice, 2012 IL 111860