

THIRD DIVISION  
March 9, 2011

**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).

No. 1-09-1522

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IN THE  
APPELLATE COURT OF ILLINOIS  
FIRST JUDICIAL DISTRICT

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THE PEOPLE OF THE STATE OF ILLINOIS,	)	Appeal from the
	)	Circuit Court of
Plaintiff-Appellee,	)	Cook County.
	)	
v.	)	No. 02 CR 30192
	)	
DENNIS THOMAS,	)	Honorable
	)	Nicholas R. Ford,
Defendant-Appellant.	)	Judge Presiding.

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PRESIDING JUSTICE QUINN delivered the judgment of the court.  
Justices Neville and Murphy concurred in the judgment.

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**O R D E R**

*HELD:* Where defendant claimed he was deprived of adequate time in law library at maximum security prison and was thereby denied access to the courts, those assertions did not establish cause to bring successive post-conviction petition; the circuit court's order dismissing successive petition was affirmed.

Defendant Dennis Thomas appeals *pro se* the circuit court's order denying him leave to file a successive post-conviction petition. On appeal, defendant contends he met the cause-and-

prejudice test for such a filing and, specifically, that he satisfied the "cause" requirement by asserting he was allowed only 2 1/2 hours per week in the prison law library. We affirm.

Following a jury trial, defendant was convicted of the attempted first degree murder of his girlfriend, Renee Hackett, and was sentenced to 30 years in prison. The evidence established that defendant stabbed Hackett several times in the neck. Defendant conceded stabbing Hackett but denied he intended to kill her. On direct appeal, this court affirmed defendant's conviction and sentence but ordered the mittimus corrected to reflect the proper number of days in custody. *People v. Thomas*, No. 1-04-2316 (2006) (unpublished order under Supreme Court Rule 23).

In 2007, defendant filed a *pro se* petition for relief under the Post-Conviction Hearing Act (the Act) (725 ILCS 5/122-1 *et seq.* (West 2006)), in which he raised eight arguments. The circuit court dismissed the petition as frivolous and patently without merit. This court affirmed in *People v. Thomas*, No. 1-07-2226 (2009) (unpublished order under Supreme Court Rule 23).

On February 26, 2009, defendant, again acting *pro se*, filed a successive post-conviction petition which is the subject of this appeal. In the successive petition, defendant advanced five issues: (1) he was deprived of the ability to confront witnesses at trial because he could not physically see them over the

judge's bench; (2) the hearsay testimony of two police officers was improperly admitted; (3) the State did not rebut evidence presented by the defense's expert witness; (4) the State offered inadmissible evidence of his previous criminal acts; and (5) the jury returned inconsistent verdicts.<sup>1</sup>

In defendant's motion for leave to file his successive petition, he mentioned the terms cause and prejudice. The motion stated, in relevant part, "For 'Cause' petitioner submits the following affidavits enclosed notarize." Three unnotarized affidavits were attached. In his purported affidavit, defendant stated he would have been able to include his five current claims in his first petition if he had had "15 hours a week of law library time" instead of only "2 ½ hours a week of physical law library" time while in maximum security. Defendant also stated that he got to the medium security facility in July 2008 and since then has received access to the law library for the full amount of time per week.

Defendant attached unnotarized affidavits of two fellow inmates, Owen Parker and Lorenzo Jones, who each stated defendant was allowed the maximum amount of library time while at the medium security facility. Parker stated defendant was permitted

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<sup>1</sup> The jury returned guilty verdicts on attempted murder and aggravated domestic battery. At sentencing, the trial court ordered the domestic battery conviction would merge into the attempted murder conviction.

to use the library for three hours per day, five days per week, and that defendant was in the library for "most of those five days." Jones stated he had worked in both the medium and maximum security libraries. Jones knew that 2 ½ hours per week was the time allowed for library use in maximum security. In contrast, Jones had observed defendant in the library in medium security for three hours per day, five days a week.

On April 17, 2009, the circuit court denied defendant leave to file his successive petition and further concluded the petition was frivolous and patently without merit. In particular, the trial court found that defendant had not met the cause requirement for a successive post-conviction petition, finding "he has not even bothered to provide this court with a reasonable explanation for why he could not have included any of these claims in his initial petition."

On appeal, defendant contends he met the cause-and-prejudice test to file a successive petition. He argues he met the "cause" requirement because his access to the prison law library was inadequate when he filed his first petition in 2007. Defendant claims that had he been allowed more library time when he filed his initial petition, such as the 15 hours of weekly library time which he has received since moving to a medium security prison in 2008, he would have raised his current claims in his initial

petition. Defendant expressly maintains the "cause is quality library time."

A defendant may file a successive post-conviction petition after obtaining leave of the trial court and satisfying the cause-and-prejudice test, under which a defendant must demonstrate cause for failing to raise the error in prior proceedings and actual prejudice resulting from the claimed error. 725 ILCS 5/122-1(f) (West 2008). "Cause" is defined as an objective factor that impeded defense counsel's efforts (or here, the efforts of this *pro se* defendant) to raise the claim in the initial post-conviction petition; "prejudice" occurs when the claimed error so infected the trial that the defendant's conviction or sentence denied him due process. 725 ILCS 5/122-1(f) (West 2008). We review *de novo* the trial court's denial of leave to file a successive post-conviction petition. *People v. Anderson*, 402 Ill. App. 3d 1017, 1028-29 (2010).

Defendant does not contend he did not receive or fully make use of his time allowed in the law library under the rules of the maximum and medium security facilities; rather, he argues the 2 ½ hours of weekly library access he was allowed in the maximum security prison, where he was housed when he filed his initial petition, was insufficient.

Defendant apparently attempts to support this position by arguing that the limited library time in the maximum security

facility deprived him of access to the courts. However, "[t]o satisfy the right to meaningful access to the courts, a prisoner only needs to receive access to a law library that will enable him to research the law and determine which facts are necessary to state a cause of action." *Hadley v. Snyder*, 335 Ill. App. 3d 347, 354 (2002), citing *Bounds v. Smith*, 430 U.S. 817 (1977).

In *Hadley*, the defendant unsuccessfully argued he was denied meaningful access to the courts when he was limited to using the law library for two hours each week. *Hadley*, 335 Ill. App. 3d at 354. To demonstrate a violation of the right to access to the courts, a prisoner must prove that prison officials failed to assist him in preparing and filing legal papers, to the specific detriment of the prisoner's claim. *Hadley*, 335 Ill. App. 3d at 354, citing *Jenkins v. Lane*, 977 F.2d 266 (7th Cir. 1992), and *Martin v. Davies*, 917 F.2d 336 (7th Cir. 1990). A prisoner must establish that he suffered an actual injury, such as a missed court date or the inability to file in a timely manner, that prejudiced his existing or impending litigation. *People v. Shaw*, 386 Ill. App. 3d 704, 717 (2008); *Hadley*, 335 Ill. App. 3d at 354.

Defendant has not met this requirement of actual injury and certainly has not been deprived of meaningful access to the courts. Although defendant indicates that with more library time while he was in maximum security, he would have been able to

ascertain his present claims and include them in his first post-conviction petition, we find that prison regulations that restrict an inmate's time in the law library do not constitute cause for purposes of filing a successive post-conviction petition. See *People v. Banks*, 161 Ill. 2d 119, 140-41 (1994) (prison officials not required to grant *pro se* prisoners unlimited access to law libraries); *People v. Walker*, 331 Ill. App. 3d 335, 341-42 (2002) (in applying "cause" factor to culpable negligence claim of delay in filing petition, defendant's asserted inability to access prison law library during two-year "lockdown" was insufficient to excuse late post-conviction filing).

Contrary to defendant's position that "cause is quality library time," "cause" is legally defined as an objective factor, such as the discovery of new evidence, that prevented the defendant from raising the claim earlier. See, e.g., *People v. Wrice*, No. 1-08-0425, slip op. at 13 (Ill. App. Dec. 2, 2010) (successive petition filed in 2007 alleged that defendant's confession was a product of police torture in 1982; "cause" was established by accompanying report issued in 2006 confirming evidence of such abuse); *People v. Smith*, 352 Ill. App. 3d 1095, 1100 (2004) (allegation of perjured testimony by expert, which met "cause" requirement, was based on information not known until after defendant filed first petition).

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Defendant has not established cause for filing his successive petition; therefore, we need not consider whether defendant established prejudice. See *People v. Pitsonbarger*, 205 Ill. 2d 444, 464 (2002). Accordingly, the circuit court's order denying defendant leave to file a successive post-conviction petition is affirmed.

Affirmed.