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IN THE
APPELLATE COURT OF ILLINOIS
SECOND DISTRICT

THE PEOPLE OF THE STATE)	Appeal from the Circuit Court
OF ILLINOIS,)	of Winnebago County.
)	
Plaintiff-Appellee,)	Nos. 03—CF—2936
)	03—CF—3353
v.)	
)	
JOEL L. MINGO,)	Honorable
)	Rosemary Collins,
Defendant-Appellant.)	Judge, Presiding.

JUSTICE McLAREN delivered the judgment of the court.
Justices Hudson and Birkett concurred in the judgment.

ORDER

Held: The trial court did not err in denying defendant's motion for leave to file a successive postconviction petition: as defendant conceded on appeal, he did not satisfy the statutory standard for obtaining leave; although defendant asserted on appeal that he did not need to obtain leave as to one of his consolidated cases, he nevertheless asked for leave, and the trial court did not err in denying him the only relief for which he asked.

Defendant, Joel L. Mingo, appeals a judgment denying him leave to file a successive petition for relief under the Post-Conviction Hearing Act (Act) (725 ILCS 5/122—1 *et seq.* (West 2008)). On appeal, defendant contends that the trial court erred in holding that the entire proposed successive petition, which challenged convictions in two separate cases that were tried together, was subject to

section 122—1(f) of the Act (725 ILCS 5/122—1(f) (West 2002)). Defendant maintains that, because he had never sought postconviction relief against the judgment in the second case, he did not need to satisfy section 122—1(f) in order to obtain relief against that judgment. We affirm.

In 2003, in case No. 03—CF—3353, defendant was charged with robbery (720 ILCS 5/18—1(a) (West 2002)) and aggravated battery (720 ILCS 5/12—4(b)(1) (West 2002)). In case No. 03—CF—2936, defendant was charged with robbery and two counts of aggravated fleeing a police officer (625 ILCS 5/11—204.1(a) (West 2008)). The cases were consolidated. After a bench trial, defendant was convicted of both counts in case No. 03—CF—3353 and of robbery in case No. 03—CF—2936 (the State dismissed the other two charges). Defendant was sentenced to concurrent prison terms of 16 and 10 years for robbery and aggravated battery in case No. 03—CF—3353 and to jail time served, plus fines and costs, in case No. 03—CF—2936.

Defendant appealed the judgment in case No. 03—CF—3353. In 2004, he petitioned under section 2—1401 of the Code of Civil Procedure (735 ILCS 5/2—1401 (West 2004)) for relief from the judgment in case No. 03—CF—3353. The trial court dismissed the petition. On December 20, 2005, defendant filed a petition under the Act, seeking relief in case No. 03—CF—3353, but not in case No. 03—CF—2936. On February 20, 2006, the trial court summarily dismissed the petition. On August 14, 2007, this court entered a judgment in defendant's direct appeal and in his appeal from the dismissal of the section 2—1401 petition. We affirmed defendant's conviction of, and sentence for, robbery; vacated his conviction of, and sentence for, aggravated battery; and affirmed the dismissal of his section 2—1401 petition. *People v. Mingo*, Nos. 2—05—0421, 2—05—1207, 2—06—0228 cons. (2007) (unpublished order under Supreme Court Rule 23).

Defendant did not appeal the dismissal of his first postconviction petition. On June 26, 2009, he moved under section 122—1(f) for leave to file a successive petition, attaching a proposed petition. Section 122—(f) reads:

“Only one petition may be filed by a petitioner *** without leave of the court. Leave of court may be granted only if a petitioner demonstrates cause for his or her failure to bring the claim in his or her initial post-conviction proceedings and prejudice results from that failure. For purposes of this subsection (f): (1) a prisoner shows cause by identifying an objective factor that impeded his or her ability to raise a specific claim during his or her initial post-conviction proceedings; and (2) a prisoner shows prejudice by demonstrating that the claim not raised during his or her initial post-conviction proceedings so infected the trial that the resulting conviction or sentence violated due process.” 725 ILCS 5/122—1(f) (West 2008).

We note that, because the Act does not apply to misdemeanor convictions—such as defendant’s in case No. 03—CF—2936—the supreme court has created a special procedure for postconviction relief in these cases. See *People v. Warr*, 54 Ill. 2d 487 (1973).

The motion’s caption referred to both cases. The motion itself, the body of which consisted of three sentences, did not distinguish between the cases, mention the special postconviction procedure created by *Warr* for misdemeanor cases, or address section 122—1(f)’s cause-and-prejudice test. The proposed petition claimed that (1) defendant’s car was unlawfully seized when he was arrested (for which offense was not specified); defendant’s trial attorney was ineffective for failing to inform him that he could receive an extended-term sentence; (2) defendant was denied due process in that he was initially told that he was eligible for an extended-term sentence, but later was “upgraded to Class X sentencing”; (3) defendant was not admonished that a Class 2 felony

conviction would trigger three years of mandatory supervised release (MSR); (4) defendant was not “properly admonished”; and (5) defendant would not have entered into a plea bargain had he known that he could receive a Class X sentence and three years of MSR. The proposed petition did not distinguish between the two criminal cases, cite *Warr*, or address section 122—1(f)’s cause-and-prejudice test.

On September 22, 2009, the trial court barred defendant from filing the proposed petition, explaining that he had shown neither cause nor prejudice. Defendant timely appealed.

On appeal, defendant contends that the trial court erred in refusing to allow him to file the proposed petition insofar as it sought relief in case No. 03—CF—2936. Defendant concedes that, having filed a prior petition under the Act in case No. 03—CF—3353, he had to satisfy section 122—1(f) in order to raise any claims against that judgment—and that he failed to do so. However, defendant notes, his proposed petition also challenged the misdemeanor conviction in case No. 03—CF—2936, which the prior petition had not done—and, indeed, could not have done.

Whether the trial court properly denied defendant’s section 122—1(f) request is a question of law that we review *de novo*. *People v. LaPointe*, 365 Ill. App. 3d 914, 923 (2006), *aff’d*, 227 Ill. 2d 39 (2007). Here, we conclude that the trial court did not err in deciding the action that defendant presented to it. Although defendant’s motion did recite the numbers of both cases, it was styled as a request for leave to file a successive petition under the Act, and that was the sole relief that it sought. Moreover, the proposed successive petition did not clearly raise any claims specifically directed against the misdemeanor conviction. The trial court was not obligated to grant relief that defendant never sought or to search the records of the underlying criminal cases and ascertain whether defendant actually needed to file the section 122—1(f) motion that he did.

On an appeal from the dismissal of a petition under the Act, the defendant is limited to issues that were raised in the petition itself. *People v. Jones*, 213 Ill. 2d 498, 508-09 (2004); *People v. Jones*, 211 Ill. 2d 140, 148 (2004). There is no reason to apply a more generous rule to an appeal from the denial of leave to file a successive petition under the Act. At the trial level, defendant sought only permission to file a successive petition that did not distinguish between the two criminal cases and did not even invoke the special procedure created by *Warr*. Neither the trial court nor this court is required to recharacterize defendant's action and we do not find error in the trial court's ruling on the only relief sought before it.

The sole issue before the trial court was whether defendant satisfied the cause-and-prejudice test of section 122—1(f) of the Act. The court correctly held that he did not, and it correctly refused to allow him to file the proposed successive petition. Therefore, the judgment of the circuit court of Winnebago County is affirmed.

Affirmed.