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No. 3–09–0156

Order filed March 7, 2011

IN THE
APPELLATE COURT OF ILLINOIS
THIRD DISTRICT

A.D., 2011

| | | |
|-------------------------|---|-------------------------------|
| THE PEOPLE OF THE STATE |) | Appeal from the Circuit Court |
| OF ILLINOIS, |) | of the 14th Judicial Circuit, |
| |) | Rock Island County, Illinois, |
| Plaintiff-Appellee, |) | |
| |) | |
| v. |) | No. 93–CF–1097 |
| |) | |
| MONTY LEWIS, |) | Honorable |
| |) | Walter D. Braud, |
| Defendant-Appellant. |) | Judge, Presiding. |

JUSTICE WRIGHT delivered the judgment of the court.
Justices McDade and O’Brien concurred in the judgment.

ORDER

Held: The trial court did not err by denying defendant's motion for leave to file a successive postconviction petition, because defendant's unsupported hearsay allegations failed to show prejudice from his failure to bring a claim of newly discovered evidence in his first petition.

Following a jury trial, defendant, Monty Lewis, was found guilty of first degree murder (720 ILCS 5/9--1(a)(2) (West 1992), and sentenced to 60 years' imprisonment. Defendant appealed, and this court affirmed, finding that the evidence presented at trial was sufficient to

support the conviction and a trial court ruling barring evidence of the victim's prior gun conviction constituted harmless error. *People v. Lewis*, No. 3–97–0546 (1999) (unpublished order under Supreme Court Rule 23). Defendant's first postconviction petition was denied, and this court affirmed the denial in an order that also allowed the State Appellate Defender's Office to withdraw as defendant's appointed counsel in accordance with *Pennsylvania v. Finley*, 481 U.S. 551 (1987). *People v. Lewis*, No. 3–02–0745 (2004) (unpublished order under Supreme Court Rule 23). Defendant filed a motion to file a successive petition for postconviction relief, alleging, *inter alia*, newly discovered evidence. The trial court denied defendant's request for leave to file a successive petition. Defendant appeals. We affirm.

FACTS

Defendant was convicted of first degree murder for the shooting death of Clarence Ford. At his trial, defendant presented evidence that he was acting in self-defense when he shot Ford. This court, in the direct appeal, found that there was ample evidence from which the jury could conclude that defendant, not Ford, was the aggressor during the final altercation, when defendant shot Ford, and affirmed defendant's conviction. The facts of the underlying altercations between defendant and Ford which resulted in Ford's death are described in our decision in that appeal. See *Lewis*, No. 3–97–0546. However, we note that although defendant was precluded by a motion *in limine* allowed by the trial court from presenting evidence of Ford's 1986 conviction for carrying a concealed weapon, defendant presented witnesses during trial who testified that Ford was known in the community as a mobster, was known to carry a gun, and had been seen by others beating women. Therefore, this court held that the jury was fully apprised of Ford's violent character.

Defendant's first petition for postconviction relief alleged that he received ineffective assistance of trial and appellate counsel. The trial court denied this petition in 2002.

On December 26, 2008, defendant filed a motion for leave to file a successive petition for postconviction relief. In the attached petition, defendant argued, *inter alia*, that he was entitled to a new trial on the basis of newly discovered evidence that Ford, the victim, may have been wanted for murder in New York. Attached to the petition was a letter from defendant's trial attorney, dated May 6, 2005, informing defendant that counsel had been advised by a law enforcement officer that Ford may have had an outstanding murder warrant in New York on the date defendant shot him. Defendant alleged that the State did not disclose this information during discovery and he was prejudiced by the State's discovery violation. The trial court denied leave to file the successive petition after finding that defendant could not show prejudice.

ANALYSIS

In this case, defendant claims the trial court erroneously denied his request for leave to file a successive postconviction petition after finding there was no showing of prejudice based on the alleged discovery violation. Defendant argues that the fact that Ford may have had an outstanding warrant for murder at the time of the shooting would have convinced the jury that Ford was in fact the initial aggressor and defendant was acting in his own self-defense. Consequently, defendant claims the information would have changed the outcome of his trial and he would not have been convicted of the offense of murder.

The State contends that the trial court correctly denied leave to file the successive petition because it was based on speculation as to the existence of the warrant, which would not have changed the result of the trial even if this information had been provided by the State during

discovery.

Section 122--1(f) of the Post-Conviction Hearing Act (the Act) (725 ILCS 5/122--1(f) (West 2006)) contemplates the filing of only one postconviction petition. However, leave to file a successive petition is permitted when a defendant establishes cause for the late filing and prejudice resulting from the failure to bring the claim in the initial postconviction petition. 725 ILCS 5/122--1(f) (West 2006); *People v. Pitsonbarger*, 205 Ill. 2d 444 (2002).

The trial court denied defendant's request for leave to file the successive petition after finding that defendant could not show prejudice. The case law provides that prejudice exists when defendant can show that the claimed constitutional error so infected his trial that the resulting conviction violated due process. *People v. Anderson*, 375 Ill. App. 3d 990 (2007). This court reviews *de novo* a trial court's denial of leave to file. *People v. Williams*, 394 Ill. App. 3d 236 (2009).

In this case, the only evidence in support of the request for leave to file a successive postconviction petition was defendant's own affidavit. Defendant's affidavit indicated that the victim, Ford, may have been subject to a warrant from New York for murder as reported by defense counsel in a letter written by defense counsel and dated May 6, 2005. According to the letter, an unidentified police officer advised counsel that Ford *may* have been wanted for murder in New York at the time of his death.

In spite of his efforts, defendant was unable to confirm that a warrant for Ford existed in New York. Without an additional affidavit that confirmed the accuracy of the warrant information, we agree that the request for leave to file a successive postconviction petition was based on speculative information that would not have been admissible at trial and could not have

affected the jury's deliberations.

Thus, we conclude that the trial court did not erroneously deny defendant's request for leave to file a successive postconviction petition based on the speculative nature of the newly discovered but inconclusive warrant information.

CONCLUSION

For the foregoing reasons, the judgment of the circuit court of Rock Island County is affirmed.

Affirmed.