

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. 4-09-0577

Order filed 2/14/11

IN THE APPELLATE COURT
OF ILLINOIS

FOURTH DISTRICT

THE PEOPLE OF THE STATE OF ILLINOIS,)	Appeal from
Plaintiff-Appellee,)	Circuit Court of
v.)	Livingston County
JIMMIE LEE FORD,)	No. 94CF39
Defendant-Appellant.)	
)	Honorable
)	Robert M. Travers,
)	Judge Presiding.

JUSTICE McCULLOUGH delivered the judgment of the court. Justices Steigmann and Myerscough concurred in the judgment.

ORDER

Held: OSAD's motion to withdraw as appellate counsel is granted and the trial court's dismissal of defendant's successive postconviction petition is affirmed where it is defendant's sixth collateral filing and his claims are barred by *res judicata*.

Defendant, Jimmie Lee Ford, appeals the trial court's dismissal of his successive postconviction petition. On appeal, the office of the State Appellate Defender (OSAD) was appointed to represent him. OSAD has filed a motion to withdraw as appellate counsel pursuant to *Pennsylvania v. Finley*, 481 U.S. 551 (1987), alleging an appeal would be without merit. We grant OSAD's motion and affirm the court's dismissal of defendant's petition.

In July 1994, a jury found defendant guilty of aggra-

vated battery (720 ILCS 5/12-4(b)(6) (West Supp. 1993)) and unlawful possession of a weapon by a person in the custody of the Illinois Department of Corrections (720 ILCS 5/24-1.1(b) (West 1992)), in connection with the stabbing of a correctional officer. In November 1994, the trial court sentenced him to consecutive terms of 10 and 30 years in prison, respectively. On direct appeal, this court affirmed defendant's convictions but ordered that his 10-year extended-term sentence for aggravated battery be reduced to 5 years. *People v. Ford*, 4-94-0997 (1996) (unpublished order under Supreme Court Rule 23); *People v. Ford*, 4-96-0398 (1996) (unpublished order under Supreme Court Rule 23) (summary order requiring the trial court to comply with previous order).

Following his direct appeal, defendant made several collateral attacks to his convictions and sentences. He filed three postconviction petitions, a petition for *habeas corpus* that was treated as a postconviction petition, and a section 2-1401 petition (735 ILCS 5/2-1401 (West 2006)). The trial court dismissed each of defendant's filings and this court affirmed the court's judgments. *People v. Ford*, 4-98-0548 (1999) (unpublished order under Supreme Court Rule 23); *People v. Ford*, 4-00-0392 (2002) (unpublished order under Supreme Court Rule 23); *People v. Ford*, 4-03-0623 (2006) (unpublished order under Supreme Court Rule 23); *People v. Ford*, 4-04-0519 (2006) (unpublished order under Supreme Court Rule 23); *People v. Ford*, 4-07-0981

(2009) (unpublished order under Supreme Court Rule 23).

On June 22, 2009, defendant filed a *pro se* document entitled "Successful Post-Conviction Petition." He alleged he received ineffective assistance of postconviction counsel, in connection with his first postconviction petition, because counsel argued defendant's fingerprints were found on the weapon used in the crime when no fingerprints were ever found on the weapon in question. Defendant also challenged the sufficiency of the State's evidence against him and claimed prosecutorial misconduct, alleging the State knowingly used evidence that was not proven to exist, namely a blood-stained paper towel, as well as perjured and fabricated testimony.

On July 20, 2009, the trial court entered an order dismissing defendant's petition. It found defendant's allegations were "repetitious, meritless and frivolous." The court held defendant's claims were barred from consideration by principles of *res judicata* and waiver.

This appeal followed. As stated, OSAD was appointed to represent defendant on appeal. On September 20, 2010, it filed a motion to withdraw as appellate counsel. The record shows service of the motion on defendant. This court granted defendant leave to file additional points and authorities but he has failed to respond.

Pursuant to the Postconviction Hearing Act (Act), a

defendant may not file successive postconviction petitions without first obtaining leave of the court. 725 ILCS 5/122-1(f) (West 2008). "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." 725 ILCS 5/122-1(f) (West 2008).

Additionally, a postconviction proceeding is a collateral attack upon a prior conviction and sentence and is limited in scope "to constitutional matters that have not been, nor could have been, previously adjudicated." *People v. Harris*, 224 Ill. 2d 115, 124, 862 N.E.2d 960, 966 (2007). "Any issues that could have been raised on direct appeal, but were not, are procedurally defaulted, and any issues that have previously been decided by a reviewing court are barred by *res judicata*. *Harris*, 224 Ill. 2d at 124-25, 862 N.E.2d at 966-67.

In June 2009, defendant filed the postconviction petition that is the subject of this appeal. It is his fifth postconviction petition and his sixth collateral filing in the matter. The record does not show defendant ever obtained leave of the court to file this most recent petition and, instead, reflects that he cannot satisfy the Act's necessary cause-and-prejudice test. Specifically, as the trial court found, defendant's claims are barred by *res judicata* as they were raised in his previous filings and rejected by both the trial court and on

review before this court. Defendant's appeal presents no meritorious issues for review.

For the reasons stated, we grant OSAD's motion to withdraw as appellate counsel and affirm the trial court's judgment.

Affirmed.