

NOTICE  
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2011 IL App (4th) 100056-U

Filed 7/22/11

NO. 4-10-0056

IN THE APPELLATE COURT

OF ILLINOIS

FOURTH DISTRICT

THE PEOPLE OF THE STATE OF ILLINOIS,	)	Appeal from
Plaintiff-Appellee,	)	Circuit Court of
v.	)	Ford County
FABIAN GREYER,	)	No. 01CF40
Defendant-Appellant.	)	
	)	Honorable
	)	Stephen R. Pacey,
	)	Judge Presiding.

JUSTICE COOK delivered the judgment of the court.  
Justices Steigmann and Appleton concurred in the judgment.

**ORDER**

¶ 1 *Held:* As no meritorious issues could be raised on appeal, the office of the State Appellate Defender's motion to withdraw as defendant's counsel on appeal is granted, and the trial court's judgment is affirmed.

¶ 2 This appeal comes to us on the motion of the office of the State Appellate Defender (OSAD) to withdraw as counsel on appeal on the ground no meritorious issues can be raised in this case. For the following reasons, we agree and affirm.

¶ 3 I. BACKGROUND

¶ 4 Following a bench trial in November 2001, the trial court found defendant, Fabian Greyer, guilty of four counts of attempt (first degree murder) (720 ILCS 5/8-4, 9-1(a)(1) (West 2000)) and sentenced him to 25 years' imprisonment. This court affirmed his conviction on direct appeal. *People v. Greyer*, No. 4-02-0018 (January 15, 2004) (unpublished order under

Supreme Court Rule 23).

¶ 5 On April 16, 2007, defendant filed a *pro se* "motion for extension of time/proceed in filing a late post conviction petition." The record does not contain a ruling on defendant's *pro se* motion. In November 2007, defendant filed a *pro se* postconviction petition under the Post-Conviction Hearing Act (Act) (725 ILCS 5/122-1 through 122-8 (West 2006)), arguing (1) ineffective assistance of counsel for his counsel's failure to "discover clear evidence" regarding his fitness prior to trial, and (2) the State failed to prove intent to kill. In December 2007, the trial court summarily dismissed defendant's *pro se* petition, stating (1) defendant had raised "no new facts" in his *pro se* petition, and (2) the fitness issue was resolved on direct appeal.

¶ 6 In September 2009, defendant filed a *pro se* motion for leave to file a successive petition for postconviction relief, arguing he was on "heavy medication" when he filed his first postconviction petition, and the person assisting him with preparing the first petition "did not understand what issues [he] was trying to raise [regarding] ineffective assistance of counsel." Attached to defendant's *pro se* motion was a "treatment review committee appeal hearing summary-report" from the Department of Corrections, stating defendant suffered from a mental illness and was administered psychotropic medication as treatment for his illness.

¶ 7 In November 2009, defendant filed a *pro se* motion for leave to amend postconviction filing with a *pro se* successive postconviction petition attached. In the successive postconviction petition, defendant argued ineffective assistance of counsel for counsel's failure (1) "to demonstrate the unreliability of the State's specific intent evidence" and (2) to conduct forensic testing on the evidence.

¶ 8 On November 10, 2009, the trial court dismissed defendant's *pro se* successive

petition. The court determined (1) the intent issue was resolved on direct appeal, (2) the forensic-testing issue was also resolved on direct appeal to the extent it was an argument attacking the sufficiency of the evidence, (3) the forensic-evidence argument could have been raised in defendant's November 2007 postconviction petition, and (4) defendant failed to show he was prejudiced by counsel's failure to conduct forensic testing. Defendant appeals the dismissal of his *pro se* successive postconviction petition.

¶ 9 Defendant filed his notice of appeal in November 2009, and the trial court appointed OSAD to serve as his attorney. In December 2010, OSAD moved to withdraw, including in its motion a brief in conformity with the requirements of *Pennsylvania v. Finley*, 481 U.S. 551 (1987). The record shows service of the motion on defendant. On its own motion, this court granted defendant leave to file additional points and authorities by March 15, 2011. Defendant has not done so. After examining the record and executing our duties in accordance with *Finley*, we grant OSAD's motion and affirm the court's judgment.

¶ 10 II. ANALYSIS

¶ 11 OSAD claims that defendant's petition presents no issue of merit upon which defendant could obtain relief for the following reasons. First, defendant's intent argument was previously decided on direct appeal. Second, the trial court correctly dismissed defendant's forensic-testing argument because (1) this argument was raised in a successive petition not allowed under section 122-1(f) of the Act (725 ILCS 5/122-1(f) (West 2006)), (2) defendant waived this argument by his failure to raise it in his first *pro se* postconviction petition, and (3) defendant failed to demonstrate that he was prejudiced by counsel's failure to conduct forensic testing.

¶ 12 Section 122–1(f) of the Act (725 ILCS 5/122–1(f) (West 2006)) states, in pertinent

part, as follows:

"Only one petition may be filed by a petitioner under this Article 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 postconviction proceedings and prejudice results from that failure."

¶ 13 In the present case, defendant filed a *pro se* motion for leave to file a successive petition for postconviction relief, alleging cause and prejudice. First, defendant alleged he was heavily medicated at the time he filed the petition, and the person assisting him with its filing did not understand the issues defendant wanted raised. Next, defendant alleged he was prejudiced because he received ineffective assistance of counsel at trial, which led to his improper conviction. The trial court dismissed defendant's successive petition without ruling on the motion for leave to file a successive petition or determining whether defendant established cause and prejudice.

¶ 14 Instead, the trial court determined defendant (1) had previously raised the issues of intent and forensic testing on direct appeal, (2) the forensic-testing issue could have been raised in defendant's November 2007 postconviction petition, and (3) defendant failed to show he was prejudiced by counsel's failure to conduct forensic testing.

¶ 15 First, defendant's ineffective-assistance-of-counsel argument for counsel's failure to rebut the State's specific-intent evidence was previously decided on direct appeal and is barred

by *res judicata*. See *People v. Blair*, 215 Ill. 2d 427, 443, 831 N.E.2d 604, 615 (2005) ("The doctrine of *res judicata* bars consideration of issues that were previously raised and decided on direct appeal.").

¶ 16 Additionally, defendant's forensic-testing argument could have been raised in his November 2007 postconviction petition. Under section 122-3 of the Act (725 ILCS 5/122-3 (West 2006), "[a]ny claim of substantial denial of constitutional rights not raised in the original or an amended petition is waived."

¶ 17 Although defendant claims he was unable to raise this argument in his first postconviction petition because he was heavily medicated, the attachment to his *pro se* motion for leave to file a successive postconviction petition suggests the medication was an effective treatment for his mental illness. Therefore, the trial court did not err by determining defendant could have raised the forensic-testing argument in his first postconviction petition. Accordingly, the trial court properly dismissed defendant's *pro se* successive postconviction petition.

¶ 18 III. CONCLUSION

¶ 19 For the reasons stated, we grant OSAD's motion to withdraw and affirm the trial court's judgment.

¶ 20 Affirmed.