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).

2011 IL App (4th) 100440-U

Filed 9/8/11

NO. 4-10-0440

IN THE APPELLATE COURT

OF ILLINOIS

FOURTH DISTRICT

THE PEOPLE OF THE STATE OF ILLINOIS,	)	Appeal from
Plaintiff-Appellee,	)	Circuit Court of
v.	)	Macon County
GREGORY HOLMES,	)	No. 97CF1130
Defendant-Appellant.	)	
	)	Honorable
	)	Lisa Holder White,
	)	Judge Presiding.

JUSTICE McCULLOUGH delivered the judgment of the court.
Justices Turner and Appleton concurred in the judgment.

ORDER

¶ 1 *Held*: The trial court did not err in denying defendant's motion for leave to file a successive postconviction petition where defendant's allegations of judicial bias were raised and rejected on direct appeal.

¶ 2 In December 1997, a jury convicted defendant, Gregory Holmes, of two counts of home invasion (720 ILCS 5/12-11 (West 1996)), one count of armed violence (720 ILCS 5/33A-2 (West 1996)), and nine counts of aggravated criminal sexual assault (720 ILCS 5/12-14(a)(1) (West 1996)). In September 1998, the trial court sentenced defendant as follows: (1) 15 years in prison on the armed-violence conviction; (2) 10 years on each of the convictions for aggravated criminal sexual assault, to be served consecutive to each other and consecutive to the armed-violence sentence; (3) a consecutive sentence of 10 years on one home-invasion conviction; and (4) a 15-year concurrent sentence on the other home-invasion conviction, for a total of 115 years in prison. On direct appeal, we affirmed defendant's convictions but vacated his

sentence on the armed-violence conviction because the section of the statute under which defendant was sentenced was found unconstitutional, and we remanded the cause for resentencing on that count. *People v. Holmes*, No. 4–98–0768 (April 28, 2000) (unpublished order under Supreme Court Rule 23).

¶ 3 On remand, the trial court resentenced defendant to 10 years' imprisonment for armed violence, with the sentence to run consecutively to the other counts. Defendant appealed, and this court affirmed the trial court's judgment. *People v. Holmes*, No. 4-00-0962 (April 19, 2004) (unpublished order under Supreme Court Rule 23).

¶ 4 In December 2000, defendant *pro se* filed a petition for relief under the Post-Conviction Hearing Act (725 ILCS 5/122-1 through 122-8 (West 1998)), arguing his consecutive sentences violated *Apprendi v. New Jersey*, 530 U.S. 466, 147 L. Ed. 2d 435, 120 S. Ct. 2348 (2000). The trial court dismissed the petition and this court affirmed the trial court's judgment. *People v. Holmes*, No. 4-02-0811 (August 19, 2003) (unpublished order under Supreme Court Rule 23).

¶ 5 In January 2003, defendant *pro se* filed a petition for relief under section 2-1401 of the Code of Civil Procedure (735 ILCS 5/2-1401 (West 2002)). The trial court dismissed the petition and this court affirmed the trial court's judgment. *People v. Holmes*, No. 4-03-0386 (December 24, 2003) (unpublished order under Supreme Court Rule 23).

¶ 6 On April 21, 2010, defendant *pro se* filed a motion for leave to file a successive postconviction petition alleging judicial bias against defendant. The trial court denied the motion. This appeal followed, and the office of the State Appellate Defender (OSAD) has been appointed to represent defendant on appeal.

¶ 7 On April 20, 2011, OSAD filed a motion for leave to withdraw as counsel on appeal pursuant to *Pennsylvania v. Finley*, 481 U.S. 551, 95 L. Ed. 2d 539, 107 S .Ct. 1990 (1987), asserting no issues of arguable merit warrant appeal. The record shows service of the motion on defendant. On our own motion, we granted defendant leave to file additional points and authorities by May 23, 2011. Defendant filed none.

¶ 8 After examining the record, we affirm the trial court's judgment and grant OSAD's motion. A postconviction proceeding only addresses constitutional issues that were not, and could not have been, raised and adjudicated on direct appeal. *People v. Pitsonbarger*, 205 Ill. 2d 444, 456, 793 N.E.2d 609, 619 (2002). The doctrine of *res judicata* bars issues raised on direct appeal, and issues that could have been raised, but were not, are forfeited. *Pitsonbarger*, 205 Ill. 2d at 456, 793 N.E.2d at 619. Because defendant raised the issue of judicial bias in his direct appeal, and the issue was fully adjudicated by this court, the issue is barred by *res judicata*.

¶ 9 Accordingly, we grant OSAD's motion to withdraw and affirm the trial court's judgment.

¶ 10 Affirmed.