NOTICE
Decision filed 02/18/11. The text of this decision may be changed or corrected prior to the filing of a Petition for Rehearing or the disposition of the same.

NO. 5-09-0112

IN THE

APPELLATE COURT OF ILLINOIS

FIFTH DISTRICT

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).

THE PEOPLE OF THE STATE OF ILLINOIS,	)	Appeal from the
	)	Circuit Court of
Plaintiff-Appellee,	)	Johnson County.
	)	
v.	)	No. 00-CF-78
	)	
MICHAEL REEVES,	)	Honorable
	)	James R. Williamson,
Defendant-Appellant.	)	Judge, presiding.

JUSTICE WELCH delivered the judgment of the court.
Presiding Justice Chapman and Justice Spomer concurred in the judgment.

R U L E 2 3 O R D E R

Held: Where the defendant failed to provide any factual basis for his allegations and failed to give any reason for not bringing the allegations in his initial postconviction petition, the defendant failed the cause-and-prejudice test of section 122-1(f) of the Post-Conviction Hearing Act and the circuit court's denial of the defendant's motion for leave to file a successive postconviction petition is affirmed.

The defendant, Michael Reeves, appeals an order of the Johnson County circuit court denying him leave to file his second successive postconviction petition under the Post-Conviction Hearing Act (Act) (725 ILCS 5/122-1 *et seq*. (West 2008)). He asserts that his motion for leave conforms with section 122-1(f) of the Act (725 ILCS 5/122-1(f) *et seq*. (West 2008)) in that it alleges the requisite cause and prejudice. For the reasons that follow, we affirm the decision of the circuit court.

The defendant pled guilty to aggravated robbery and burglary on September 5, 2001. He was sentenced to 15 years' imprisonment for the aggravated robbery and 5 years' imprisonment for the burglary. The defendant did not pursue a direct appeal from these

convictions. His first *pro se* postconviction petition alleged the ineffective assistance of counsel in that his attorney did not argue that the State had failed to commence its prosecution in a timely manner and that the attorney had obtained a continuance without the defendant's approval. The circuit court dismissed the petition as frivolous and this court affirmed. *People v. Reeves*, No. 5-04-0630 (2006) (unpublished order under Supreme Court Rule 23 (eff. July 1, 1994)).

The defendant filed a second *pro se* postconviction petition on January 27, 2007, alleging the ineffective assistance of counsel for, among other things, a failure to investigate the defendant's fitness to stand trial or plead guilty. The defendant did not seek leave to file a successive postconviction petition as required by section 122-1(f) of the Act, nor did he offer any explanation for why these issues had not been raised in his earlier postconviction petition. The circuit court dismissed the defendant's petition as frivolous but did not address the defendant's failure to comply with the procedural requirements of section 122-1(f). This court affirmed on procedural grounds, noting, "[This] judgment is based on the defendant's procedural default and is entered without prejudice to the merits of the petition." *People v. Reeves*, No. 5-07-0125, order at 6 (2009) (unpublished order under Rule 23).

The defendant filed a *pro se* motion for leave to file his third postconviction petition on February 24, 2009. The motion provides in full as follows:

> "Defendant, Michael Reeves, is an inmate at Menard Corr. Ctr., Menard, Illinois. At the time I pled guilty in Sept. 2001. [*sic*] and at the time I filed my first petition for post-conviction I did not know I was 'affected by a mental disease and had significant psychiatric symptoms at the time of the alleged crimes' (exhibit A) Report from 'Dr. Van' M.D. dated July 24, 2007. (Do not have access to law library to get copies made.) (Exhibit B) Rule 23 Order, Massac Co.. [*sic*] Sept. 30, 2003. I request leave to file a second post-conviction petition."

The statement is signed and dated. Attached to the motion is the first page of the Rule 23 order. No doctor's report is attached to, or explained in, the motion. The circuit court denied the defendant leave on the grounds that he had failed the cause-and-prejudice test set forth in section 122-1(f) of the Act. It is from this denial that the defendant appeals.

The issue for this court's review is whether the circuit court properly denied the defendant's motion for leave to file a successive postconviction petition. To the extent the defendant argues the merits of the underlying case to this court, we note they are not properly before us, and we limit our review to the denial of the defendant's motion. See *People v. DeBerry*, 372 Ill. App. 3d 1056, 1060 (2007) (leave must be granted before a petition can be filed; the merits of the petition are not at issue until leave is granted and a petition is filed).

Under section 122-1(f) of the Act, a defendant may file only one petition for postconviction relief without first seeking and obtaining leave of the court to do so. It states as follows:

> "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 the 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).

An inmate desiring to file a successive postconviction petition must first clear the procedural hurdle of seeking and obtaining leave to file the petition pursuant to section 122-1(f). "Section 122-1(f) unequivocally requires that a defendant *must* obtain leave of court *before* filing a successive petition." (Emphasis in original.) *DeBerry*, 372 Ill. App. 3d at

1060. At the first stage of a postconviction proceeding, the burden on the petitioner is low; he need only present a limited amount of detail. *People v. Frison*, 365 Ill. App. 3d 932, 933 (2006). It is the defendant's burden to demonstrate both cause and prejudice for each claim raised. *People v. McDonald*, 364 Ill. App. 3d 390, 393 (2006). *Pro se* pleadings are subject to a more liberal reading than are formal pleadings prepared by counsel. *People v. Smith*, 268 Ill. App. 3d 574, 580 (1994). We review *de novo* the denial of a defendant's motion for leave to file a postconviction petition. *People v. Coleman*, 183 Ill. 2d 366, 389 (1998).

In the instant case, the defendant fails the cause-and-prejudice test of section 122-1(f). "Cause" is defined as an objective factor that impeded the defendant's ability to raise a specific claim during his initial postconviction petition. 725 ILCS 5/122-1(f) (West 2008). Construing the defendant's motion liberally, we conclude that he fails to provide the circuit court with any objective reason for why his claims were not raised in his initial petition. Mentioning a doctor's report, without either attaching the report or sufficiently describing the contents of the report, gives the court no basis on which to determine whether this is a valid "objective factor." In the same vein, attaching the first page of a Rule 23 order in the Massac County appeal, without describing the relevance of the order or including the entire order for the circuit court's review, leaves the court guessing at the defendant's point. Looking beyond the defendant's motion, we find that the record contains a psychological report prepared in November 2000 in Nevada. In this report, the doctor opines that the defendant has mental problems. While this could provide some factual basis for the defendant's assertion of a mental disease in the instant case, the defendant's mention of a mental disease in the motion is so vague that it is not clear if the report supports the defendant's claim.

The defendant also fails to give this court a reason for why he did not make the instant allegations in his initial postconviction petition. Irrespective of the contents of the Rule 23 order in the Massac County appeal, it predates the defendant's initial postconviction petition,

and absent an explanation by the defendant for the delay in raising a claim therein, any claim related to this order should have been raised in the defendant's initial petition. This reasoning applies to the psychological report prepared in Nevada in November 2000: because the report predates the defendant's initial postconviction petition, any argument based on the report should have been raised in the initial petition.

While *pro se* petitioners are afforded extra leniency in their pleadings, a minimum amount of competency and compliance with the rules is required. See *Turner-El v. West*, 349 Ill. App. 3d 475, 479 (2004) ("Although *pro se* pleadings are normally liberally construed, a liberal construction will not be utilized to remedy the failure of a complaint to plead sufficient facts to establish a cause of action"). Here, the defendant alleges a mental condition that impacted his behavior at the time of the crimes, but he does not provide enough facts to support his allegation. Moreover, the defendant does not address why this "objective factor" was not raised in his initial postconviction petition. Without more facts or explanations from the defendant, the circuit court had no basis on which to determine whether sufficient cause existed to support the defendant's motion.

For the foregoing reasons, the denial of the defendant's motion for leave to file a successive postconviction petition is affirmed.

Affirmed.