

¶ 5 On May 31, 2001, defendant filed a motion to vacate void judgment. The motion was dismissed by the circuit court, and the dismissal was affirmed on appeal. *People v. Williams*, No. 5-01-0466 (July 19, 2002) (unpublished order pursuant to Supreme Court Rule 23 (eff. July 1, 1994)).

¶ 6 On January 26, 2005, defendant filed a *pro se* postconviction petition. On January 31, 2005, the circuit court dismissed the petition, holding that it was not timely filed and that it was patently without merit. The dismissal was affirmed on appeal. *People v. Williams*, No. 5-05-0093 (Feb. 14, 2007) (unpublished order pursuant to Rule 23).

¶ 7 On March 15, 2010, defendant filed a successive postconviction petition alleging that he was not admonished regarding his right to file a motion to reconsider and that he was not warned that any issues not raised in a motion to reconsider would be waived. On March 24, 2010, the circuit court dismissed defendant's successive postconviction petition. The circuit court held (1) that the postconviction petition was filed more than three years from the date of defendant's conviction, (2) that defendant was not entitled to bring another postconviction claim without leave of court, and (3) that defendant's petition was frivolous and without merit. Defendant filed this timely appeal.

¶ 8 ANALYSIS

¶ 9 We review *de novo* the circuit court's dismissal of a successive postconviction petition. *People v. LaPointe*, 365 Ill. App. 3d 914, 923 (2006), *aff'd*, 227 Ill. 2d 39 (2007). On appeal, defendant argues that the circuit court was erroneous in all three reasons for its dismissal of his successive postconviction petition. We shall address each of these reasons separately. However, where a dismissal is proper as a matter of law, the circuit court may be affirmed on any basis supported by the record.

Rodriguez v. Illinois Prisoner Review Board, 376 Ill. App. 3d 429, 433 (2007).

¶ 10 First, the circuit court dismissed defendant's successive postconviction petition because it was filed more than three years from defendant's date of conviction. Defendant argues that at the first stage of postconviction proceedings the circuit court may not address the issue of timeliness. The State concedes this issue.

¶ 11 Section 122-2.1(a)(2) of the Post-Conviction Hearing Act (the Act) (725 ILCS 5/122-2.1(a)(2) (West 2006)) states, "If the petitioner is sentenced to imprisonment and the court determines the petition is frivolous or is patently without merit, it shall dismiss the petition ***." The Illinois Supreme Court has interpreted this section's plain language and the section's silence regarding timeliness to mean "that the Act does not authorize the dismissal of a post-conviction petition during the initial stage based on untimeliness." *People v. Boclair*, 202 Ill. 2d 89, 99 (2002).

¶ 12 On this issue, we find defendant's contention and the State's concession to be well-taken. The circuit court's reasoning of untimeliness was erroneous.

¶ 13 Second, the circuit court dismissed defendant's successive postconviction petition because defendant was not entitled to bring a successive postconviction claim without leave of court. Defendant argues that a successive postconviction petition may be brought if the defendant satisfies the cause-and-prejudice test. Defendant argues that he should be allowed to proceed with his *pro se* petition and demonstrate cause and prejudice once counsel is appointed. In response, the State argues that the cause-and-prejudice test must be satisfied in the initial stage, and thus, it contends that since defendant did not satisfy the prejudice prong of the test, the circuit court rightfully dismissed the postconviction petition.

¶ 14 Section 122-1(f) of the Act explains the guidelines for filing successive postconviction petitions 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 post-conviction proceedings and prejudice results from that failure. For 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 2006).

This test is "composed of two elements, both of which must be met in order for the petitioner to prevail." *People v. Pitsonbarger*, 205 Ill. 2d 444, 464 (2002).

¶ 15 The Illinois Supreme Court has noted that it is not mandatory to file a separate motion for leave to file a successive postconviction petition. *People v. Tidwell*, 236 Ill. 2d 150, 161 (2010). However, the court has noted, "[I]t is incumbent upon defendant, by whatever means, to prompt the circuit court to consider whether 'leave' should be granted, and obtain a ruling on that question, *i.e.*, a determination as to whether defendant has demonstrated cause and prejudice." *Id.* at 157.

¶ 16 In determining whether a defendant has met the cause-and-prejudice test, the successive postconviction petition "need state only the gist of a meritorious claim of cause and prejudice." *LaPointe*, 365 Ill. App. 3d at 924. The relaxed scrutiny of the petition is because the petitions are normally drafted by *pro se* defendants. *Id.*

¶ 17 With these principles in mind, we turn to defendant's successive postconviction petition. Defendant's petition did not request leave to file. However, since the absence of that request is not detrimental to defendant's petition, we look to defendant's demonstration of cause and prejudice.

¶ 18 Defendant concedes that he does not specifically state a cause or reason that he was impeded in making this claim earlier. However, he argues that he need only state a gist of a claim for cause and prejudice and that he should be allowed to further demonstrate these when he is appointed an attorney. We disagree. The courts have relaxed the standard so that *pro se* defendants may proceed throughout the first stage of postconviction proceedings without an attorney. Here, defendant did not even attempt to establish a "gist" of cause. He simply skipped this step and moved along to allege the prejudice.

¶ 19 Thus, we conclude and defendant concedes that he failed to show cause for not raising the issue in his first postconviction petition. Furthermore, we find no legal authority that supports the claim to allow defendant to proceed and establish the cause and prejudice later in the proceedings. The cause-and-prejudice test was created by the legislature as a hurdle that the defendant must meet in order to advance to the second stage of postconviction proceedings. Allowing defendant to wait to establish cause and prejudice at a later stage of the proceedings would be contrary to the statutory scheme for successive postconviction petitions.

¶ 20 Since the cause-and-prejudice test is a two-prong test and the defendant failed to establish any cause, we need not address whether defendant sufficiently demonstrated prejudice. Because defendant did not satisfy the test, we conclude that the circuit court correctly dismissed defendant's successive postconviction petition. In light of our conclusion on this issue, it is not necessary to address the circuit court's last remaining reason for dismissal.

¶ 21 CONCLUSION

¶ 22 For the foregoing reasons, the circuit court's dismissal of defendant's successive postconviction petition is affirmed.

¶ 23

Affirmed.