

No. 1-10-0843

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).

IN THE
APPELLATE COURT OF ILLINOIS
FIRST JUDICIAL DISTRICT

THE PEOPLE OF THE STATE OF ILLINOIS,)	Appeal from the
)	Circuit Court of
Plaintiff-Appellee,)	Cook County.
)	
v.)	No. 87 CR 9591
)	
WILLIAM DOYLE,)	Honorable
)	Nicholas R. Ford,
Defendant-Appellant.)	Judge Presiding.

PRESIDING JUSTICE STEELE delivered the judgment of the court.
Justices Neville and Salone concurred in the judgment.

ORDER

- ¶ 1 *Held:* Defendant's successive postconviction petition was correctly dismissed for failure to show the requisite cause and prejudice. Defendant claimed that the State had an undisclosed plea agreement with a key witness against him and failed to disclose that the witness had bribed a judge in another case. However, defendant was convicted on the evidence of three witnesses, all of whom were impeached at trial by their gang membership and prior crimes. The record and supreme court cases involving the witness in question refuted the alleged agreement. Circuit court judgment affirmed.
- ¶ 2 Following a 1988 jury trial, defendant William Doyle was convicted of murder and sentenced to 55 years' imprisonment. On direct appeal, we affirmed his conviction and sentence (and those of his three codefendants). See *People v. Fort*, 248 Ill. App. 3d 301 (1993). We have

also affirmed the disposition of defendant's prior petitions for collateral relief, including the summary dismissal of at least two¹ postconviction petitions. *People v. Doyle*, No. 1-04-3544 (2006), No. 1-03-1961 (2004), No. 1-01-3604 (2002), No. 1-01-1739 (2002) (unpublished orders under Supreme Court Rule 23). Defendant now appeals from the March 2010 dismissal, upon the State's motion, of his 2005 successive postconviction petition. He contends on appeal that he made a substantial showing that the State (1) failed to disclose evidence in violation of *Brady v. Maryland*, 373 U.S. 83 (1963), and (2) knowingly elicited false testimony at trial. He also contends that the dismissal of his petition as untimely was erroneous. The State responds that the petition was properly dismissed because defendant failed to show the cause and prejudice required to file a successive petition and because his claims were previously and fully litigated in a codefendant's case.

¶ 3 Defendant and codefendants Jeff Fort, Derrick Kees, and Ray Ferguson (also known as Ferguson) were convicted in a 1988 jury trial of the 1981 murder of Willie Bibbs in front of a bar on 43rd Street in Chicago. The key trial witnesses were Anthony Sumner and Earl Hawkins.

¶ 4 After his 1985 arrest with fellow members of the El Rukn street gang, Sumner implicated himself, defendant, and codefendants in the Bibbs murder. Sumner testified that Fort, the leader of the El Rukns, ordered the 43rd Street shooting during a meeting at Fort's home attended by defendant, codefendants, Sumner, and Hawkins. Defendant, Kees and Ferguson would fire at the bar and anyone nearby, having been issued guns, including a machine gun for Ferguson, at the meeting; Sumner would be a driver and Hawkins would act as the lookout. At the scene, Sumner

¹We reversed the 1992 summary dismissal of defendant's first postconviction petition and remanded for further proceedings. *People v. Doyle*, No. 1-92-2430 (1994) (unpublished order under Supreme Court Rule 23). However, defendant then withdrew the petition.

saw defendant, Kees and Ferguson approach the bar, heard five or six shots, and then saw them run back to the car.

¶ 5 Two eyewitnesses identified Hawkins as the lookout who signaled the two or three masked gunmen to approach and fire five or six shots at Bibbs. However, Hawkins was tried and acquitted of the Bibbs murder following his 1981 arrest. In 1987, after being sentenced to death for his involvement in an unrelated double murder, Hawkins wrote a letter to police detective Daniel Brannigan implicating himself, defendant, and codefendants in the Bibbs killing in hopes of benefitting his own case. Hawkins testified consistently with Sumner to the events of the meeting and at the crime scene, adding that Kees alone fired six shots at Bibbs before he, defendant, and Ferguson fled without firing any more shots. Hawkins admitted that he had been charged, but not tried, in another unrelated homicide case; however, that homicide was used as aggravation in sentencing the double murder. Hawkins also admitted that, after agreeing to testify, he was held in a federal jail in Chicago rather than a State prison. As of trial, Hawkins had an appeal pending from his double-homicide conviction, and he denied that the State made him any promises regarding his case, either that he would receive a reduced sentence or that the State would not prosecute if the case was remanded on appeal.

¶ 6 An assistant State's Attorney (ASA) testified that the State was planning to file a brief in Hawkins's appeal from his death sentence. Detective Brannigan testified that he was working, as he had for several years, for both the Chicago police and the federal Bureau of Alcohol, Tobacco, and Firearms investigating the activities of the El Rukns. In 1987, he, along with federal and State prosecutors, federal agents, and police, interviewed Sumner at length, during which he admitted involvement in crimes including the Bibbs murder. While Sumner received "consideration" following trial testimony in several cases, Detective Brannigan denied making any promises to Hawkins.

¶ 7 Former El Rukn member Trammel Davis confirmed that a meeting, at which Hawkins, Sumner, defendant and codefendants were present, was held at Fort's apartment on the night Bibbs was murdered and that he saw Ferguson holding a machine gun. The forensic evidence corroborated Hawkins's account that all shots fired at the scene came from one gun: the six recovered shell casings were fired from one gun and the two bullets from Bibbs's body were fired from one gun.

¶ 8 On direct appeal, defendant and codefendants Kees and Ferguson contended in relevant part that their convictions were erroneous because the convictions were based on the testimony of accomplices Hawkins and Sumner and their cross-examination of Hawkins had been restricted. We found no error, noting that the jury was properly informed that Hawkins and Sumner were accomplices with criminal backgrounds, Hawkins hoped to benefit from his testimony as he faced the death penalty for double murder, and Sumner was not charged with the Bibbs murder or another homicide in exchange for his testimony.

¶ 9 Defendant's three prior postconviction petitions (including his withdrawn initial petition) and two petitions for relief from judgment did not raise the instant claims.

¶ 10 In the instant petition, filed *pro se* in August 2005, defendant alleged that the State failed to disclose that Hawkins had attempted to bribe the trial judge in his double-homicide case in 1986. Hawkins testified in a 1993 federal criminal trial against Thomas Maloney, the judge who had presided over his double-murder trial. Maloney had offered to acquit Hawkins in exchange for a bribe, but then returned the bribe money before finding Hawkins guilty and sentencing him to death. *United States v. Maloney*, 71 F. 3d 645 (7th Cir. 1995). Our supreme court affirmed the circuit court's reversal of Hawkins's convictions and remanded for a new trial because the bribe affected Maloney's impartiality. *People v. Hawkins*, 181 Ill. 2d 41 (1998). Upon remand, the State did not seek the death penalty and, in 2002, Hawkins pled guilty in exchange for the State's

sentencing recommendation that he remain in prison until he would be 72 years old. Defendant argued that the State withheld evidence that the State had a deal with Hawkins – "an understanding between Hawkins and the State that Hawkins would not ultimately be sentenced to death if he cooperated fully" in this and other cases – and that Hawkins had bribed Maloney.

¶ 11 In his affidavit, defendant averred that codefendant Ferguson informed him in July 2005 of *Brady* violations regarding Hawkins and his bribery of and testimony against Maloney. The petition was supported by a transcript of Hawkins's testimony at Maloney's trial in 1993, at which he stated that he hoped his cooperation would help him avoid the death penalty but also admitted receiving money from the federal government while in custody, whereas before his cooperation he had been receiving money from the El Rukns. The petition was also supported by Detective Brannigan's 1995 affidavit describing his years-long investigation of the El Rukns, stating in relevant part that "Hawkins began cooperating in 1987 following his death sentence in 1986" and that "[a]round the time Hawkins testified in [the instant] murder trial in October 1988, he began actively participating in the El Rukn [racketeering] investigation." The attachments also included Hawkins's undated plea agreement in a 1989 federal case, signed by the State's Attorney, Hawkins, his counsel, and federal prosecutors, providing in relevant part that the State: (1) reserved the right to seek the death penalty in the double-murder case if it was ever retried; (2) would oppose any effort to reduce Hawkins's sentence to natural life imprisonment; and (3) would prosecute Hawkins for any outstanding crimes it was aware of if his sentence was reduced below natural life imprisonment.

¶ 12 In March 2009, postconviction counsel filed a certificate pursuant to Illinois Supreme Court Rule 651(c) (eff. Dec. 1, 1984) and supplemented the *pro se* petition with various exhibits.

¶ 13 In June 2009, the State moved to dismiss the petition as supplemented. The State argued that, though the petition was untimely filed, defendant had neither addressed timeliness nor claimed a lack of culpable negligence. The State also argued defendant had not sought leave to file a successive postconviction petition and that the instant claims should be deemed waived or forfeited because they could have been raised in one of his earlier collateral cases.

¶ 14 The State further argued that defendant should be estopped from raising the instant claims as they had already been decided in the context of a postconviction petition by codefendant Ferguson. Ferguson's *Brady* claim similarly contended that the State had withheld evidence of Hawkins's bribery, federal trial testimony, reversal and remand of his double-murder conviction, and subsequent guilty plea. In his petition, Ferguson argued that the State should have disclosed the bribe and that Hawkins expected to benefit significantly from his testimony against Ferguson. An evidentiary hearing was held, at which Detective Brannigan testified that he did not make any promises to Hawkins beyond attesting to his cooperation in the instant case, that he did not know that Hawkins had bribed or tried to bribe Maloney, and that he was unaware of any privileges extended to Hawkins while in federal custody during the bribery investigation. ASA Brian Sexton, who negotiated Hawkins's 2002 guilty plea, testified that the State had intended to seek the death penalty upon remand but decided otherwise based on unfavorable circuit court rulings rather than upon Hawkins's cooperation in the instant case. On this evidence, the circuit court had denied Ferguson relief.

¶ 15 This court affirmed the denial of relief to Ferguson. *People v. Ferguson*, No. 1-05-2965 (2008) (unpublished order under Supreme Court Rule 23). Though Hawkins testified in his own case that he told ASAs about the bribe to Maloney, we found that Detective Brannigan testified credibly that he knew Hawkins was participating in a federal bribery investigation but not the specifics, and particularly not that he had actually offered a bribe to Maloney. Thus, this court

concluded that Ferguson failed to show that the State knew at the time of his trial that Hawkins had bribed Maloney. This court also held that postconviction counsel had not rendered unreasonable assistance to Ferguson by not calling Hawkins to testify at the evidentiary hearing, since Hawkins had refused on grounds of self-incrimination to testify in Fort's postconviction proceeding and there was no reason to believe that he would be more cooperative with Ferguson. In its motion to dismiss in the instant case, the State argued that defendant's claims would be no more meritorious than when Ferguson raised them.

¶ 16 Defendant responded to the State's motion to dismiss and simultaneously filed a motion for leave to file a successive petition. In both, he argued that the failure to disclose Hawkins's deal and bribery rendered his trial fundamentally deficient and that he did not learn until 2005 that the State knew of Hawkins's bribe. He also argued in response to the dismissal motion that the court had effectively granted leave to file a successive petition by appointing counsel, thus advancing the case to the second stage.

¶ 17 On March 15, 2010, the court heard the motion to dismiss. Defendant argued that the *Ferguson* case has neither *res judicata* nor collateral estoppel effects in his case and that "[w]hile the evidence which we would present *** may be substantially similar to" Ferguson's evidence, there was potential evidence not introduced in Ferguson's case. A federal prosecutor from the Maloney bribery case and another affiant could address whether Hawkins "received numerous favors from the government." The State replied that the "unsavory actions taken by the federal prosecutors" were unknown by and inapplicable to the State as shown by the *Ferguson* hearing testimony of Detective Brannigan and ASA Sexton, and that Maloney's 1993 conviction was "big-time news" so that defendant could not plausibly claim that he was unaware of the conviction until just before his 2005 petition. The court granted the State's motion to dismiss the petition, expressly finding it to be untimely. The court, while noting that the affidavits

supporting a postconviction petition must be accepted at face value, found that defendant's averment that he was unaware of the conviction until 2005 was "fundamentally ridiculous." The court also found that defendant's claims and those disposed of in *Ferguson* are "exactly the same." This appeal timely followed.

¶ 18 On appeal, defendant contends that his petition made a substantial showing that the State (1) failed to disclose evidence in violation of *Brady*, and (2) knowingly elicited false testimony at trial. He also contends that the dismissal of his petition as untimely was erroneous. The State responds that the petition was properly dismissed because defendant failed to show the cause and prejudice required to file a successive petition and because his claims were previously litigated.

¶ 19 Section 122-1 of the Post-Conviction Hearing Act (Act) (725 ILCS 5/122-1 (West 2010)) places at least two restrictions on the filing of petitions under the Act. The first is that a petition must be timely filed – not more than 6 months after the conclusion of proceedings in the United States Supreme Court, or from the date for filing a *certiorari* petition, on the petitioner's direct appeal – "unless the petitioner alleges facts showing that the delay was not due to his or her culpable negligence." 725 ILCS 5/122-1(c) (West 2010).

¶ 20 The second restriction on postconviction petitions is that only one petition may be filed without leave of the court, which "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 2010). Cause is "an objective factor that impeded [the petitioner's] ability to raise a specific claim during his or her initial post-conviction proceedings," and prejudice exists when "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 2010).

¶ 21 In *Brady*, the Supreme Court held that prosecutors violate a defendant's right to due process by failing to disclose evidence favorable to the defendant and material to guilt or punishment. *People v. Beaman*, 229 Ill. 2d 56, 73 (2008) (citing *Brady*, 373 U.S. at 87). A *Brady* claim requires a showing that (1) the undisclosed evidence is favorable to the defendant because it is exculpatory or impeaching, (2) the evidence was suppressed by the State either wilfully or inadvertently, and (3) the defendant was prejudiced because the evidence is material to guilt or punishment. *Beaman*, 229 Ill. 2d at 73-74. Evidence is material where there is a reasonable probability that the result of the proceeding would have been different had the evidence been disclosed; that is, where the evidence in question could reasonably put the entire case in such a different light as to undermine confidence in the verdict. *Id.* at 74.

¶ 22 Here, we conclude that the court did not err in dismissing defendant's petition as amended because defendant failed to show the requisite cause and prejudice to file a successive petition. The trial record and direct appeal refute that the instant claim "so infected the trial that the resulting conviction or sentence violated due process." First and foremost, testimony by Sumner and Davis also established the guilt of defendant and codefendants, and in particular Sumner as well as Hawkins placed defendant at the scene of the shooting. Hawkins's account and testimony were corroborated by the two eyewitnesses who identified him as the lookout at the shooting and supported by the forensic evidence showing that only codefendant Kees fired his gun. As we noted on direct appeal, the jury was well aware that Hawkins wrote to Detective Brannigan while facing the death penalty for several homicides other than the instant case and offered to cooperate with the State in hope of receiving consideration. Hawkins admitted at trial that he was in a federal jail rather than the "death row" of a State prison because he was cooperating. Despite ample grounds for impeachment of the three former El Rukns who provided the substance of the State's case against defendant, the jury convicted defendant and codefendants.

¶ 23 Defendant's petition attempts to circumvent the clear denials by Detective Brannigan and Hawkins that Hawkins had been made any promises to obtain his testimony in defendant's case by raising the specter of a death-penalty " 'deal' [that] may have taken 20 years to complete." However, the supreme court proceedings in Hawkins's two appeals refute the allegation of an agreement between State prosecutors – the officials relevant to defendant's trial – and Hawkins regarding his death sentence. As was touched upon at defendant's trial, Hawkins took a direct appeal, and the supreme court affirmed his convictions and sentence. *People v. Fields*, 135 Ill. 2d 18 (1990). Moreover, when the circuit court in 1996 granted Hawkins postconviction relief of a new trial because of his abortive bribe of Maloney, the State appealed that decision to the supreme court. *Hawkins*, 181 Ill. 2d at 49. There, the State raised arguments of waiver, laches, and unclean hands, and injected error to challenge Hawkins's right to a new trial. *Hawkins*, 181 Ill. 2d at 50-60. Had any of these arguments gained traction, Hawkins's murder convictions and death sentence would have stood. Thus, the State was acting years after defendant's trial in a manner utterly inconsistent with the existence of an agreement with Hawkins regarding his death penalty. The testimony of ASA Sexton in the *Ferguson* evidentiary hearing further refutes the allegation of a death-penalty agreement. ASA Sexton testified clearly that, following the supreme court's remand, the State initially sought the death penalty, but then chose to take the death penalty off the table, not because of any agreement with Hawkins (which ASA Sexton expressly denied), but due to adverse circuit court rulings. Even without ASA Sexton's testimony, we would conclude under these circumstances that the allegation of an agreement with Hawkins involving his death sentence, coming to fruition only years after his testimony in the instant case and despite actions to the contrary by the State, is "a fanciful factual allegation" (see *People v. Hodges*, 234 Ill.2d 1, 16 (2009)) that neither the circuit court nor this court is required to accept.

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¶ 24 Accordingly, we affirm the judgment of the circuit court.

¶ 25 Affirmed.