

Nos. 1-10-3678 and 1-11-0042 (Cons.)

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 Cook County
Plaintiff-Appellee,)	
)	
v.)	83 CR 11071
)	
PAUL CHATMAN,)	
)	Honorable
Defendant-Appellant.)	Matthew E. Coghlan,
)	Judge Presiding.

PRESIDING JUSTICE McBRIDE delivered the judgment of the court.
Justices Howse and Palmer concurred in the judgment.

ORDER

¶ 1 HELD: The trial court erred in failing to rule on defendant's *pro se* motion for leave to file his successive postconviction petition. The cause is remanded to the trial court to review the petition in accordance with guidelines for a successive postconviction petition under section 122-1(f) (725 ILCS 5/122-1(f) (West 2008)).

¶ 2 Defendant Paul Chatman, *pro se*, appeals the trial court's dismissal of his successive postconviction petition. On appeal, defendant raises multiple issues, including a claim that the trial court erred in reviewing his successive postconviction petition under the statutory framework for an initial postconviction petition without granting his request for leave to file his

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petition.

¶ 3 Following a bench trial, defendant was convicted of first degree murder, armed violence, and armed robbery in the 1983 death of Vera Kibby and sentenced to concurrent terms of 75 years for murder and 40 years for armed robbery. The trial court merged the armed violence conviction into the murder conviction. The evidence at trial showed that defendant struck 66-year-old Kibby, a friend of his mother's, in the head with a baseball bat and then stole her purse and car. Defendant raised an insanity defense at trial, but the trial court rejected that defense in finding defendant guilty. Because our review of this case involves a clearly procedural error in the trial court's disposition of defendant's successive postconviction petition, we need not discuss in detail the facts leading up to defendant's conviction and sentence in this case. A detailed discussion of defendant's trial can be found in his direct appeal. *People v. Chatman*, 145 Ill. App. 3d 648 (1986). On direct appeal, the reviewing court affirmed his conviction and extended term sentence, but reduced his sentence for armed robbery to 30 years. *Chatman*, 145 Ill. App. 3d at 662.

¶ 4 Defendant has filed several petitions seeking different forms of postconviction relief. In November 1994, defendant filed a petition for writ of *habeas corpus* in the United States District Court for the Northern District of Illinois, which was dismissed. *Chatman v. Page*, 868 F. Supp. 1036 (N.D. Ill. 1994).

¶ 5 In October 2000, defendant filed a petition for relief from judgment pursuant to section 2-1401 of the Code of Civil Procedure (735 ILCS 2/1401 (West 2000)), challenging his sentence under *Apprendi v. New Jersey*, 530 U.S. 466 (2000). The trial court dismissed the petition as

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untimely, which was affirmed on appeal. *People v. Chatman*, No. 1-01-0373 (January 22, 2002) (unpublished order pursuant to Supreme Court Rule 23).

¶ 6 In February 2004, defendant filed a *pro se* "amalgamated petition for collateral relief," pursuant to section 2-1401 of the Code of Civil Procedure (735 ILCS 5/2-1401 (West 2004)) and the Post-Conviction Hearing Act (725 ILCS 5/122-1 *et seq.* (West 2004)). The petition was supplemented by appointed counsel. The State moved to dismiss the petition. The trial court granted the State's motion, finding that defendant's petition was untimely and claims were barred by *res judicata*. On appeal, the appellate defender sought to withdraw as counsel pursuant to *Pennsylvania v. Finley*, 481 U.S. 551 (1987). The reviewing court granted the *Finley* motion, denied defendant's request for the appointment of new counsel and affirmed the trial court's dismissal order. *People v. Chatman*, No. 1-06-1555 (August 3, 2007) (unpublished order pursuant to Supreme Court Rule 23).

¶ 7 In May 2008, defendant filed his *pro se* successive postconviction petition. In his petition, defendant argued that every attorney who represented him was ineffective, the trial court failed to consider his rehabilitative potential at sentencing, and his extended-term sentence is void under *Apprendi*. The petition fell off the court call for a few months. In October 2008, the prosecutor incorrectly stated that this petition was defendant's first postconviction petition. The trial court appointed the public defender to represent defendant and continued the case. At the December 2008 status, the appointed public defender appeared and stated that he had "learned that [defendant] had a recent postconviction case resolved several years ago." The prosecutor noted that if it was a successive postconviction petition, then defendant needed leave of court to

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file the petition. The trial court set a status date in January to allow parties to review the petition and the court file. At subsequent status hearings in February, April and May 2009, the parties continued to refer to defendant's filing as a successive postconviction petition. At the May 2009 status hearing, the prosecutor clarified that "at this stage what will be required is to seek leave of court to even file a successive petition in accordance with case law and the statute itself before going into the merits of the actual issues, if any." The trial court also referred to the filing as a successive postconviction petition.

¶ 8 In August 2009, defendant filed a *pro se* motion for leave to file successive petition for postconviction relief. In his motion, defendant stated that he had newly discovered evidence that he had been sexually abused as a baby and this evidence was vital to his affirmative defense of insanity and mental illness at trial. Defendant also stated that he was filing an amended petition with the motion, but the record on appeal does not include the amended petition. The trial court acknowledged the filing of the motion for leave to file successive postconviction petition at status hearings in August and September 2009. At the November 2009 status hearing, the prosecutor again questioned whether the trial court had ruled on defendant's motion for leave to file his successive postconviction petition and pointed out that "[t]hat's the first issue that has to be considered before we move forward here." The prosecutor also noted that "[o]n the successive there's not a 90-day termination on the ruling." The trial court observed that the "record does not indicate that leave to file the successive petition was granted." The court continued the petition for a month to review it.

¶ 9 At the December 2009 status hearing, the trial court stated:

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"This was continued from the last court date for [the] Court to review whether leave will be granted to file successive petition. That was the first I heard that this was a successive petition. It is not in the original court file here, and when the matter was originally up, not originally, but when it was up October 28, I was informed by the [prosecutor] that it was not a successive petition, and I had appointed a public defender. So at this point, I'm going to treat it as if the matter had been docketed ***."

¶ 10 The trial court then allowed the State to file a motion to dismiss the petition. In March 2010, the State filed a motion to dismiss the petition. In May 2010, defendant filed a *pro se* motion in opposition of the motion to dismiss. The trial court heard arguments in August 2010.

¶ 11 In November 2010, the trial court entered its written order granting the State's motion to dismiss. In the order, the court noted: "Unfortunately, because of a mistake of fact on this court's part, the petition was docketed and advanced for second stage proceedings, and therefore, it can no longer be dismissed on these grounds." The court then found that the claims raised in defendant's successive postconviction petition were procedurally barred under *res judicata* and waiver. Defendant filed a motion to reconsider the dismissal of his successive petition, which the trial court denied.

¶ 12 This appeal followed.

¶ 13 The Illinois Post-Conviction Hearing Act (Post-Conviction Act) (725 ILCS 5/122-1 through 122-8 (West 2004)) provides a tool by which those under criminal sentence in this state

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can assert that their convictions were the result of a substantial denial of their rights under the United States Constitution or the Illinois Constitution or both. 725 ILCS 5/122-1(a) (West 2004); *People v. Coleman*, 183 Ill. 2d 366, 378-79 (1998). Postconviction relief is limited to constitutional deprivations that occurred at the original trial. *Coleman*, 183 Ill. 2d at 380. “A proceeding brought under the [Post-Conviction Act] is not an appeal of a defendant's underlying judgment. Rather, it is a collateral attack on the judgment.” *People v. Evans*, 186 Ill. 2d 83, 89 (1999).

¶ 14 However, the Post-Conviction Act only contemplates the filing of one postconviction petition with limited exceptions. 725 ILCS 5/122-1(f) (West 2010); see also *People v. Pitsonbarger*, 205 Ill. 2d 444, 456 (2002). Under section 122-1(f), a defendant must satisfy the cause and prejudice test in order to be granted leave to file a successive postconviction petition. 725 ILCS 5/122-1(f) (West 2010).

“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 2010).

¶ 15 Section 122-1(f) "evinces an intent to limit the filing of both successive and frivolous postconviction petitions." *People v. Tidwell*, 236 Ill. 2d 150, 156 (2010). Both elements of the

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cause and prejudice test must be satisfied to prevail. *Pitsonbarger*, 205 Ill. 2d at 464. "In the context of a successive post-conviction petition, however, the procedural bar of waiver is not merely a principle of judicial administration; it is an express requirement of the statute."

Pitsonbarger, 205 Ill. 2d at 458 (citing 725 ILCS 5/122-3 (West 1996)). The supreme court in *Pitsonbarger* also recognized an exception for a fundamental miscarriage of justice.

Pitsonbarger, 205 Ill. 2d at 459; see also *People v. Edwards*, 2012 IL 11711, at ¶23. "To demonstrate such a miscarriage of justice, a petitioner must show actual innocence or, in the context of the death penalty, he must show that but for the claimed constitutional error he would not have been found eligible for the death penalty." *Pitsonbarger*, 205 Ill. 2d at 459. We review the dismissal of a postconviction petition without an evidentiary hearing *de novo*. *Pitsonbarger*, 205 Ill. 2d at 456.

¶ 16 In this case, there was initially some confusion about whether defendant's *pro se* postconviction petition was his first petition or if it was a successive petition. However, apart from the status hearing in September 2008, the parties and the trial court repeatedly acknowledged that defendant had filed a successive postconviction petition. In August 2009, defendant filed a *pro se* motion for leave to file a successive postconviction petition.

Nevertheless, at the December 2009 status hearing, the trial court stated that the first time he was informed that the petition was successive was at the November 2009 status hearing. The court then held that it would treat the petition "as if the matter had been docketed" and allowed the State to file a motion to dismiss. No ruling was entered on defendant's motion for leave to file the successive petition and the court did not review the petition under the cause and prejudice test

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as set forth in section 122-1(f).

¶ 17 The supreme court in *People v. LaPointe*, 227 Ill. 2d 39, 44 (2007) held that "[t]he plain language of section 122-1(f) prohibits the filing of a successive postconviction petition without first obtaining leave of court." See also 725 ILCS 5/122-1(f) (West 2008). The court in *LaPointe* also rejected the argument that a successive petition must be docketed after 90 days. *LaPointe*, 227 Ill. 2d at 44. "Because the statute expressly conditions leave to file on the petitioner's satisfaction of the cause-and-prejudice test, a second or successive petition cannot be considered filed despite its having been previously accepted by the clerk's office." *LaPointe*, 227 Ill. 2d at 44.

¶ 18 In *People v. Tidwell*, 236 Ill. 2d 150 (2010), the supreme court reaffirmed that a successive postconviction petition will not be considered filed and no further proceedings will occur until leave is granted.

"However, it is clearly defendant's burden under the statute to obtain 'leave' of court before a successive postconviction petition may be 'filed,' so that further proceedings can follow. Therefore, it 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. In most cases, this *will* require a motion or request and an articulated argument in order to initiate court action, but that is not necessarily so."

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(Emphasis in original.) *Tidwell*, 236 Ill. 2d at 157.

¶ 19 Here, defendant filed a *pro se* motion for leave to file his successive postconviction petition in August 2009. At the November 2009 status hearing, the prosecutor observed that the trial court still needed to rule on defendant's motion for leave before moving forward. However, at the December 2009 status hearing, the trial court declined to rule on the request for leave and opted to consider the petition "as if" it had been docketed. However, the statute does not allow for this action. The supreme court in *Tidwell* observed that "a successive postconviction petition is not considered 'filed' for purposes of section 122-1(f), and further proceedings will not follow, until leave is granted, a determination dependent upon a defendant's satisfaction of the cause-and-prejudice test." *Tidwell*, 236 Ill. 2d at 161; see also *People v. Edwards*, 2012 IL App (1st) 091651. "The 90-day statutory period within which the circuit court must rule or else trigger the automatic docketing of an initial postconviction petition for second-stage consideration does not apply to successive petitions until leave is granted to file the successive petition." *Edwards*, at ¶ 19 (citing *LaPointe*, 227 Ill. 2d at 44).

¶ 20 The court made no explicit findings under section 122-1(f) relating to the cause and prejudice test and did not rule on defendant's motion for leave to file his successive petition. The trial court's actions were clearly erroneous because it did not comply with the Post-Conviction Hearing Act or with supreme court case law outlining the procedure for successive postconviction petitions. "A trial court's decision concerning whether to grant a defendant leave to file a successive postconviction petition is controlled by statute." *People v. Thompson*, 383 Ill. App. 3d 924, 929 (2008). Generally, "where, as here, the circuit court's power to act is controlled

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by statute, the court must proceed within the statute's strictures, and any action taken by the court that exceeds its statutory power to act is void." *In re Jaime P.*, 223 Ill. 2d 526, 540 (2006).

Additionally, a court "' is not free to reject or expand its statutory authority despite the desirability or need for such action." "' *Jaime P.*, 223 Ill. 2d at 540 (quoting *In re Gerald D.*, 308 Ill. App. 3d 628, 631 (1999), quoting *In re Ardedia L.*, 249 Ill. App. 3d 35, 40 (1993)).

Since the trial court never granted defendant leave to file his successive postconviction petition, the petition was never filed in the circuit court and never should have advanced beyond that stage.

¶ 21 The State concedes that the trial court failed to adhere to the requirements of the Post-Conviction Act for reviewing successive postconviction petitions, but asks this court to affirm the dismissal on the merits. We decline to do so. Defendant filed a *pro se* successive postconviction petition and later a *pro se* motion for leave to file the successive petition, but the trial court did not rule on the motion or review the petition under the cause and prejudice test, in contravention of the Post-Conviction Act. As previously stated, no further proceedings should have taken place unless and until the trial court reviewed the successive petition under the cause and prejudice test in section 122-1(f).

¶ 22 For this reason, we reverse the dismissal of defendant's successive postconviction petition and remand for review under the standard set forth for successive postconviction petitions. We make no finding as to whether defendant's successive postconviction petition can satisfy the cause and prejudice test.

¶ 23 Reversed and remanded.

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