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2012 IL App (3d) 120183-U

Order filed November 27, 2012

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IN THE  
APPELLATE COURT OF ILLINOIS  
THIRD DISTRICT

A.D., 2012

THE PEOPLE OF THE STATE	)	Appeal from the Circuit Court
OF ILLINOIS,	)	of the 10th Judicial Circuit,
	)	Stark County, Illinois,
Plaintiff-Appellee,	)	
	)	Appeal No. 3-12-0183
v.	)	No. 96-CF-14
	)	
RONALD LEE STOECKER,	)	Honorable
	)	Stuart P. Borden,
Defendant-Appellant.	)	Judge, Presiding.

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JUSTICE O'BRIEN delivered the judgment of the court.  
Presiding Justice Schmidt and Justice Lytton concurred in the judgment.

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**ORDER**

¶ 1 *Held:* (1) Allowing the State 45 days to respond to defendant's motion for leave to file a successive postconviction petition did not advance the petition to the second stage of postconviction proceedings when the defendant had not obtained leave of court to file the successive petition. (2) The trial court did not err by denying defendant's motion to file a successive petition because defendant failed to show cause for his failure to raise the issues in prior proceedings.

¶ 2 Following a jury trial, defendant, Ronald Lee Stoecker, was found guilty of first degree murder (720 ILCS 5/9-1(a)(2) (West 1996)) and aggravated criminal sexual assault (720 ILCS

5/12-14(a)(2)(West 1996)). He was sentenced to natural life in prison and a concurrent term of 30 years of imprisonment, respectively. Subsequent to filing a direct appeal (*People v. Stoecker*, No. 3-98-0750 (1999) (unpublished order under Supreme Court Rule 23)) and multiple motions and postconviction petitions, defendant filed a motion for leave to file a successive postconviction petition under the Post-Conviction Hearing Act (Act) (725 ILCS 5/122-1 *et seq.* (West 2010)). The trial court allowed the State 45 days to respond to the motion and, subsequently, denied defendant's request for leave to file the successive petition.

¶ 3 Defendant appealed, arguing that: (1) he should have been appointed counsel because the trial court had advanced his successive postconviction petition to stage two of the postconviction proceedings by allowing the State 45 days to respond to his petition; and (2) the trial court erred in denying his motion for leave to file a successive postconviction petition. We affirm.

¶ 4

#### FACTS

¶ 5 In 1996, 15-year-old Jean Humble accepted a ride from a man, who took her to a field and sexually assaulted her. The man slit her throat and left her. Humble walked to get help and was transported to a hospital. From her hospital bed, Humble described her assailant and subsequently died. Eighteen months later, defendant was apprehended in Costa Rica and extradited to Illinois on charges of the sexual assault and murder of Humble.

¶ 6 The jury convicted defendant of first degree murder and aggravated criminal sexual assault. Defendant was sentenced to concurrent terms of imprisonment of natural life without parole for the murder conviction and 30 years for the aggravated criminal sexual assault conviction. On direct appeal, defendant argued that the trial court improperly admitted Humble's

hearsay statements as excited utterances, he was denied a fair trial due to an erroneous admission of wiretap recordings, and the trial court should have granted his motion to change the venue due to the pretrial publicity of the case. *Stoecker*, No. 3-98-0750. This court affirmed defendant's conviction and sentence. *Stoecker*, No. 3-98-0750.

¶ 7 On May 2, 2005, defendant filed a *pro se* postconviction petition, which was summarily dismissed. The trial court granted defendant's motion for reconsideration of the dismissal on the issue of whether defendant's trial counsel and appellate counsel provided ineffective assistance. Defendant presented numerous other issues and filed five subsequent amended petitions for postconviction relief. The trial court dismissed defendant's fifth petition, and defendant appealed. On appeal, this court affirmed the dismissal based on the untimely filing of the petition. *People v. Stoecker*, 384 Ill. App. 3d 289 (2008).

¶ 8 On October 21, 2011, defendant filed a motion for leave to file a successive postconviction petition. The issues presented in defendant's attached 58-page petition, as described by the trial court, were as follows:

"(1) An assertion that the sentencing statute is invalid; (2) An alleged violation of his *Miranda* rights and the Extradition Act; (3) Allegation of a biased jury; (4) A confusing argument regarding the charging of the case and findings of probable cause prior to arraignment; (5) a disjointed argument concerning evidence introduced at trial; and (6) an assertion regarding trial counsel's failure to act upon the Defendant's investigation concerns and requests."

On December 2, 2011, the trial court held a status hearing on the motion for leave to file the successive petition. The court allowed the State 45 days to respond. The State filed no response.

On February 7, 2012, the trial court issued its written ruling denying defendant's motion for leave to file the successive petition, finding that defendant failed to show cause for failing to raise the claims in prior proceedings or prejudice by an error in violation of due process. Defendant appealed.

¶ 9

#### ANALYSIS

¶ 10 On appeal, defendant argues that: (1) his successive postconviction petition was advanced to stage two of the postconviction proceedings when the trial court allowed the State 45 days to respond and, therefore, he should have been appointed counsel in accordance with the Act; and (2) the trial court erred in denying his motion for leave to file a successive postconviction petition.

¶ 11 The Act provides a statutory remedy to criminal defendants who claim that substantial violations of their constitutional rights occurred at trial. *People v. Edwards*, 2012 IL 111711. The Act is not a substitute for an appeal but, instead, a collateral attack on a final judgment. *Edwards*, 2012 IL 111711. Consequently, where a petitioner has previously appealed his judgment of conviction, the doctrine of *res judicata* will bar postconviction review of all issues decided by the reviewing court, and waiver will bar any other claims that could have been presented to the reviewing court. *Edwards*, 2012 IL 111711.

¶ 12 Additionally, the Act contemplates the filing of only one postconviction petition, and successive postconviction actions are disfavored. *Edwards*, 2012 IL 111711. A petitioner seeking to institute a successive postconviction proceeding must first obtain "leave of court." *Edwards*, 2012 IL 111711, ¶ 24. It is incumbent on a petitioner to prompt the circuit court to consider whether "leave" should be granted, and obtain a ruling on that question. *Edwards*, 2012

IL 111711, ¶ 24, citing *People v. Tidwell*, 236 Ill. 2d 150 (2010). Therefore, defendant has the burden to obtain "leave of court" to file the successive petition and must submit enough documentation in support of the request to allow a circuit court to decide whether to grant the requested leave. *Edwards*, 2012 IL 111711.

¶ 13 I. Whether the Successive Postconviction Petition was  
Advanced to Second Stage Proceedings

¶ 14 Here, defendant argues that the trial court advanced his successive postconviction petition to the second stage of the postconviction proceedings by allowing the State the opportunity to respond to his motion for leave to file the successive petition. However, under section 122-1(f) of the Act, a defendant attempting to institute a successive postconviction proceeding must first obtain "leave of court." In this case, the circuit court did not initially grant defendant leave of court to file the petition. Instead, the court allowed the State time to respond to the motion. Because leave to file the petition was never granted, the successive petition cannot be considered "filed" for purposes of the Act and, thus, the petition could not have advanced to further proceedings. See *Tidwell*, 236 Ill. 2d at 157 (a successive postconviction petition will not be considered "filed," and further proceedings will not follow, until leave is granted).

¶ 15 II. Denial of Defendant's Motion to File Successive Postconviction Petition

¶ 16 Defendant argues that the trial court erred in denying his petition for leave to file a successive petition for postconviction relief. This court reviews *de novo* a trial court's denial of leave to file a successive postconviction petition. *People v. Williams*, 394 Ill. App. 3d 236 (2009).

¶ 17 In seeking leave of court to file a successive petition, a petitioner must demonstrate: (1)

"cause and prejudice" for the failure to raise the claim earlier (see *People v. Pitsonbarger*, 205 Ill. 2d 444, 457 (2002); 725 ILCS 5/122-1(f) (2010)); or (2) a fundamental miscarriage of justice demonstrated by a show of actual innocence. *Edwards*, 2012 IL 111711, ¶ 16. Under the "cause-and-prejudice" test: (1) a petitioner shows cause by identifying an objective factor that impeded his ability to raise a specific claim during his initial postconviction proceeding; and (2) a petitioner shows prejudice by demonstrating that the claim not raised during his initial postconviction proceeding so infected the trial that the resulting conviction or sentence violated due process. 725 ILCS 5/122-1(f)(1), (f)(2) (West 2010). Where a defendant sets forth a claim of actual innocence in a successive postconviction petition, the defendant is excused from showing cause and prejudice. *People v. Ortiz*, 235 Ill. 2d 319 (2009).

¶ 18 Here, defendant's allegations make no claim of actual innocence and fail to demonstrate cause and prejudice. Specifically, the issues alleged do not involve newly discovered evidence. See *Ortiz*, 235 Ill. 2d 319 (evidence in support of a claim of actual innocence must be newly discovered, material, noncumulative, and of such a conclusive character as would probably change the result of a retrial). Additionally, defendant has not shown sufficient cause for failing to raise these claims on direct appeal or during his prior postconviction proceedings. Therefore, we must affirm the trial court's denial of defendant's motion for leave to file the successive petition.

¶ 19 **CONCLUSION**

¶ 20 For the foregoing reasons, the judgment of the circuit court of Stark County is affirmed.

¶ 21 Affirmed.