

NOTICE
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2012 IL App (4th) 100728-U

Filed 1/11/12

NO. 4-10-0728

IN THE APPELLATE COURT

OF ILLINOIS

FOURTH DISTRICT

THE PEOPLE OF THE STATE OF ILLINOIS,)	Appeal from
Plaintiff-Appellee,)	Circuit Court of
v.)	Champaign County
EDWARD D. THOMPSON,)	No. 99CF245
Defendant-Appellant.)	
)	Honorable Jeffrey B. Ford,
)	Judge Presiding.

JUSTICE APPLETON delivered the judgment of the court.
Justices Cook and Knecht concurred in the judgment.

ORDER

¶ 1 *Held:* Because defendant failed to make the showing of cause and prejudice that section 122-1(f) of the Post-Conviction Hearing Act (725 ILCS 5/122-1(f) (West 2010)) required, the trial court was correct to deny his motion for leave to file a second successive postconviction petition.

¶ 2 Defendant, Edward D. Thompson, who is serving a 45-year prison sentence for the first-degree murder of Barry Robinson, appeals from the trial court's denial of his motion to file a second successive petition for postconviction relief. Pursuant to *Pennsylvania v. Finley*, 481 U.S. 551 (1987), and *People v. Lee*, 251 Ill. App. 3d 63 (1993), the office of the State Appellate Defender has moved to withdraw from representing defendant, because in OSAD's opinion, it would be impossible to make a reasonable argument in support of this appeal. Defendant has responded with additional points and authorities. The State also has filed a brief.

¶ 3 After considering these arguments, we agree with OSAD's assessment of the merits of this appeal. The trial court was correct to deny defendant's motion to file the proposed second successive postconviction petition, because defendant did not make the showing of cause and prejudice that section 122-1(f) of the Post-Conviction Hearing Act (725 ILCS 5/122-1(f) (West 2010)) required as a condition of filing a successive postconviction petition. Therefore, in our *de novo* review (*People v. LaPointe*, 365 Ill. App. 3d 914, 923 (2006)), we grant OSAD's motion for withdrawal, and we affirm the trial court's judgment.

¶ 4 I. BACKGROUND

¶ 5 Two persons were convicted of Robinson's murder: defendant and Charles Harris. Harris was convicted in a separate trial, on a theory of accountability.

¶ 6 In his proposed second successive postconviction petition, defendant maintains that convicting both him and Harris for Robinson's murder was tantamount to embracing irreconcilable theories. This contradiction, he alleges, was evident in the grand-jury transcript, which he characterizes as new evidence, and he accuses his trial counsel and his appellate counsel in his unsuccessful direct appeal (*People v. Thompson*, No. 4-99-0757 (July 6, 2001) (unpublished order under Supreme Court Rule 23)) of rendering ineffective assistance by failing to highlight the State's "conflicting theories" and to point out the violation of due process in indicting and prosecuting both him and Harris for being "the shooter."

¶ 7 Defendant further alleges, in his proposed second successive postconviction petition, that because there was no evidence that he murdered Robinson and because he lacked a motive to do so, the trial court should have granted his pretrial motion to suppress his statement to the police and should have granted him a new trial.

¶ 8 The grand-jury transcript is attached to the proposed successive petition. Detective John Schweighart testified before the grand jury that in the investigation of Robinson's death, he interviewed both Harris and defendant. Harris told Schweighart that he and Robinson got into a physical fight and in the midst of the fight, he handed defendant a pistol, with which defendant then shot Robinson. Defendant admitted to Schweighart that he shot the pistol that killed Robinson.

¶ 9 II. ANALYSIS

¶ 10 As we earlier noted, a successive postconviction is permissible only upon a showing of cause and prejudice. Section 122-1(f) provides 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 2010).

¶ 11 Defendant has identified no objective factor that impeded him from raising, in the initial postconviction proceeding, his present claim that convicting both him and Harris of

Robinson's murder was an impermissible contradiction. See 725 ILCS 5/122-1(f) (West 2010). The grand-jury transcript, on which the claim is based, is not new evidence, contrary to defendant's suggestion. Trial counsel and appellate counsel both had access to the transcript, as defendant admits in his claim of ineffective assistance.

¶ 12 Also, defendant suffered no prejudice from the conviction of both Harris and himself for Robinson's murder. See 725 ILCS 5/122-1(f) (West 2010). He suffered no prejudice because there was nothing wrong with convicting them both for the murder. Contrary to defendant's assumption, two persons can be convicted of the same murder, even though only one of them was the shooter. If A hands B a pistol with the intention that B use it to shoot C and if B then shoots C with the pistol, A is just as much a murderer as B. It will be futile for A to point out that B, instead of A, is the one who pulled the trigger. The law will not care. A is legally accountable for B's act. See 720 ILCS 5/5-2 (West 1998). We are aware of no case holding that it is a violation of due process to convict both the shooter and the person who encouraged and assisted the shooter. "[O]ne who commits an offense under accountability principles can and should be charged and tried under an indictment for the substantive offense." *People v. Krouse*, 30 Ill. App. 3d 446, 448 (1975).

¶ 13 As for defendant's other claims—that there is a "lack of evidence and no motive"—he has not identified an objective factor that impeded his ability to raise those claims in an earlier postconviction proceeding. See 725 ILCS 5/122-1(f) (West 2010).

¶ 14 III. CONCLUSION

¶ 15 For the foregoing reasons, we affirm the trial court's judgment. We award the State \$50 in costs against defendant.

¶ 16 Affirmed.