

consideration in these consolidated appeals.

¶ 3

I. BACKGROUND

¶ 4

After separate bench trials, defendant was convicted of domestic battery (720 ILCS 5/12-3.2(a)(2) (West 2004)) in McLean County case No. 04-CF-1052, and unlawful possession of a controlled substance with intent to deliver, a Class 2 felony (720 ILCS 570/401(d) (West 2004)) and unlawful possession of less than 15 grams of cocaine, a Class 4 felony (720 ILCS 570/402(c) (West 2004)) in McLean County case No. 05-CF-367. The cases were consolidated for sentencing and the trial court sentenced defendant to consecutive terms of 3 years in prison in case No. 04-CF-1052 and 22 years in prison in case No. 05-CF-367.

¶ 5

Defendant filed an appeal in both cases, claiming his combined sentence of 25 years in prison was excessive. This court rejected defendant's claim, holding the trial court had not abused its discretion in sentencing defendant to a combined prison term of 25 years. The sentence fell within the applicable range for Class X felonies (see 730 ILCS 5-8-1(a)(3) (West 2004)) and was justified based upon defendant's "significant criminal history" and several witnesses' testimony regarding his violent tendencies. We affirmed defendant's sentences. *People v. Clemon*, No. 4-05-1009 (June 4, 2007) (unpublished order under Supreme Court Rule 23).

¶ 6

In February 2008, this court granted OSAD's motion to withdraw as counsel on defendant's appeal from the trial court's order granting the State's motion to dismiss his petition for relief from judgment filed in both trial court cases. Defendant had challenged the imposition of a three-year term of mandatory supervised release on constitutional grounds. OSAD believed an appeal on those grounds would be frivolous and moved to withdraw. We agreed and entered a summary order accordingly. *People v. Clemon*, No. 4-06-0965 (February 20, 2008) (unpublished

order under Supreme Court Rule 23(c)(2)).

¶ 7 In March 2008, defendant filed a *pro se* postconviction petition in both cases. Defendant alleged (1) the trial court failed to conduct a proper *Krankel* inquiry (see *People v. Krankel*, 102 Ill. 2d 181, 189 (1984)), (2) his trial counsel rendered ineffective assistance, and (3) his direct appeal counsel rendered ineffective assistance. After a second-stage hearing, the circuit court granted the State's motion to dismiss. Defendant appealed and we affirmed. *People v. Clemon*, No. 4-09-0621 (November 18, 2010) (unpublished order under Supreme Court Rule 23).

¶ 8 Before this court issued its order, in October 2009, defendant filed multiple pleadings in both cases. One was entitled "Petition for Post-Conviction Relief of Ineffective Assistance of Counsel." Accompanying the petition was a "Motion for Leave to File a[] *Pro-Se* Petition for Ineffective Assistance of Counsel on Direct Appeal Under Post-Conviction Relief." Defendant alleged his direct appeal counsel had rendered ineffective assistance, his postconviction appellate counsel had rendered ineffective assistance, and the trial judge who had dismissed his initial postconviction petition at the second stage had failed to recognize that defendant was "speaking about" both his trial and appellate counsel in the allegations in his initial postconviction petition. He sought the opportunity to relitigate his initial allegations from which he was prevented from raising allegedly due to postconviction counsel's ineffectiveness.

¶ 9 The circuit court denied defendant's petitions, finding no cause existed to allow the filing of a successive postconviction petition. The court further noted that defendant demonstrated no prejudice as a result of his counsels' performance. Defendant appealed, filing a separate notice in both circuit court cases. This court docketed the appeal in McLean County case No. 04-CF-1052 as case No. 4-10-0872, and the appeal in McLean County case No. 05-CF-367 as case No. 4-10-

0873. We have consolidated the appeals.

¶ 10

II. ANALYSIS

¶ 11 The Post-Conviction Hearing Act (Act) (725 ILCS 5/122-1 through 122-8 (West 2008)) contemplates a defendant filing only one petition without leave of court. See 725 ILCS 5/122-1(f) (West 2008). To obtain leave to file a successive petition, the petitioner must establish cause for his failure to raise any new claims and prejudice arising from the denial of a hearing on those new claims. 725 ILCS 5/122-1(f) (West 2008). This court has stated:

"Pursuant to the cause and prejudice test, the defendant must show "cause" for failing to raise the issue in a prior proceeding and actual "prejudice" resulting from the claimed error. [Citation.] "Cause" is defined as an objective factor external to the defense that impeded defense counsel's attempts to raise the claim in an earlier proceeding. [Citation.] "Prejudice" is defined as an error so infectious to the trial proceeding that the resulting conviction violates due process. [Citation.]" *People v. Purnell*, 356 Ill. App. 3d 524, 529 (2005) (quoting *People v. Leason*, 352 Ill. App. 3d 450, 453 (2004)).

"A ruling on an initial postconviction petition has *res judicata* effect with respect to all claims that were raised or could have been raised in the petition." *People v. Thompson*, 383 Ill. App. 3d 924, 931 (2008). A trial court's denial of a defendant's motion to file a successive petition is reviewed *de novo*. *People v. Simmons*, 388 Ill. App. 3d 599, 606 (2009).

¶ 12

In his proposed second postconviction petition, defendant raised the same issues

relating to his trial counsel's performance as he raised in his initial petition. He further sought to raise additional issues relating to trial counsel's and appellate counsel's performance that could have been raised, but were not, in his initial petition. Defendant's successive petition does not argue any cause for his failure to include these issues in his original petition. Therefore, we need not reach the issue of prejudice. Because defendant could have raised the issues in his initial petition but did not, the issues are forfeited and cannot now be raised in a successive petition. *People v. Pitsonbarger*, 205 Ill. 2d 444, 458 (2002).

¶ 13 "A petitioner who contends that appellate counsel rendered ineffective assistance of counsel must show that the failure to raise an issue on *** appeal was objectively unreasonable and that the decision prejudiced petitioner." *People v. Childress*, 191 Ill. 2d 168, 175 (2000). Defendant failed to do so.

¶ 14 III. CONCLUSION

¶ 15 After reviewing the record consistent with our responsibilities under *Finley*, we agree with OSAD defendant cannot raise any meritorious issues in his appeal, and we grant OSAD's motion to withdraw as counsel for defendant and affirm the circuit court's judgment. As part of our judgment, we award the State its \$50 statutory assessment against defendant as costs of this appeal.

¶ 16 Affirmed.