

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).

2012 IL App (4th) 110136-U

Filed 8/24/12

NO. 4-11-0136

IN THE APPELLATE COURT

OF ILLINOIS

FOURTH DISTRICT

|                                      |   |                      |
|--------------------------------------|---|----------------------|
| THE PEOPLE OF THE STATE OF ILLINOIS, | ) | Appeal from the      |
| Plaintiff-Appellee,                  | ) | Circuit Court of     |
| v.                                   | ) | McLean County,       |
| TAUREAN D. CHAMBERS,                 | ) | No. 07CF579          |
| Defendant-Appellant.                 | ) |                      |
|                                      | ) | Honorable            |
|                                      | ) | Kevin P. Fitzgerald, |
|                                      | ) | Judge Presiding.     |

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JUSTICE POPE delivered the judgment of the court.  
Presiding Justice Turner and Justice Steigmann concurred in the judgment.

**ORDER**

- ¶ 1 *Held*: Defendant forfeited the issues he raises for the first time on appeal where he failed to first raise those issues in his postconviction petition.
- ¶ 2 In May 2008, defendant, Taurean D. Chambers, pleaded guilty to home invasion (720 ILCS 5/12-11(a)(2) (West 2006)) and aggravated criminal sexual assault (720 ILCS 5/12-14(a)(2) (West 2006)). In July 2008, the trial court sentenced defendant to consecutive terms of 10 years' imprisonment for home invasion and 15 years' imprisonment for aggravated criminal sexual assault, with a mandatory supervised release (MSR) term of three years to life. In October 2010, defendant filed a *pro se* postconviction petition, arguing (1) the court improperly sentenced him to serve consecutive sentences and (2) his convictions violated the one-act, one-crime doctrine. In January 2011, the court summarily dismissed defendant's postconviction petition.
- ¶ 3 Defendant appeals, arguing for the first time on appeal his MSR term is

unconstitutional because section 5-8-1(d)(4) of the Unified Code of Corrections (Unified Code) (730 ILCS 5/5-8-1(d)(4) (West 2006)) violates the separation of powers doctrine and the proportionate penalties clause. We affirm.

¶ 4

#### I. BACKGROUND

¶ 5 On June 4, 2007, defendant was arrested following a report of sexual assault. The victim reported she had been standing outside her sister's residence when defendant approached her. Defendant asked her if she had any marijuana. She told him "no" and went back inside. She attempted to close the door behind her, but defendant followed her into the residence. Defendant struck her twice in the head with "a large landscaping rock that weighed approximately two and a half pounds." Defendant ordered her to remove her pants, which she did because defendant was still holding the rock. After sexually assaulting her, defendant took her cell phone and some cash and left. The victim then called police, who arrested defendant a short time later. The victim identified defendant, who had her cell phone and the amount of cash that had been taken, as the person who assaulted her.

¶ 6 On June 5, 2007, the State charged defendant with aggravated criminal sexual assault (720 ILCS 5/12-14(a)(1), (a)(2) (West 2006)) (two counts), home invasion (720 ILCS 5/12-11(a)(2) (West 2006)), residential burglary (720 ILCS 5/19-3(a) (West 2006)), aggravated battery (720 ILCS 5/12-4(b)(1) (West 2006)), and possession of drug paraphernalia (720 ILCS 600/3.5(a) (West 2006)).

¶ 7 On May 8, 2008, the parties notified the trial court they had reached a plea deal in which defendant agreed to plead guilty to home invasion and aggravated criminal sexual assault in exchange for the State's agreement to dismiss the remaining charges and not seek a sentence

greater than 30 years' imprisonment. The court confirmed with defendant he understood he would have to serve 50% of the home invasion sentence and 85% of the aggravated criminal sexual assault sentence. The court also noted it was mandatory those sentences be served consecutively. The court also stated "[a]ny sentence that's going to be imposed is going to be followed by a three-year period of [MSR] \*\*\*." After the State recited the factual basis, the court accepted defendant's guilty plea.

¶ 8 On July 1, 2008, the trial court sentenced defendant to consecutive terms of 10 years and 15 years' imprisonment respectively for home invasion and aggravated criminal sexual assault. Following the imposition of the term of years, the following discussion took place:

"THE COURT: He will—[(addressing the assistant State's Attorney)], this requires a lifetime—does this require a lifetime registration?

[MS. FOSTER (assistant State's Attorney)]: Three to lifetime, yes.

[MR. McELDOWNEY (defendant's counsel)]: Parole period is three years, three to life.

[THE COURT]: Three to life parole.

[MS. FOSTER ]: Yes.

[MR. McELDOWNEY ]: I think the Court is correct, this will be a lifetime."

The sentencing judgment signed by the court reflected defendant was required to serve an MSR term of three years to life.

¶ 9 Defendant did not move to withdraw his guilty plea, nor did he pursue a direct appeal.

¶ 10 On October 18, 2010, defendant filed a *pro se* postconviction petition, arguing (1) the trial court erred in ordering him to serve consecutive sentences, and (2) his convictions violated the one-act, one-crime doctrine.

¶ 11 On January 13, 2011, the trial court summarily dismissed defendant's postconviction petition in a detailed written order.

¶ 12 This appeal followed.

¶ 13 II. ANALYSIS

¶ 14 On appeal, defendant argues *for the first time* his MSR term is void because section 5-8-1(d)(4) of the Unified Code, which requires a person convicted of aggravated criminal sexual assault serve an MSR term of three years to life, is unconstitutional. Specifically, defendant contends the Department of Corrections impermissibly imposes a determinate term of MSR, which violates the separation of powers doctrine and proportionate penalties clause of the Illinois Constitution. Defendant maintains his MSR term must be vacated and the cause remanded for the imposition of a three-year term.

¶ 15 We note the supreme court has made it clear that one of the most important tasks of an appellate court, other than ascertaining its jurisdiction, is to determine whether issues have been forfeited. *People v. Smith*, 228 Ill. 2d 95, 106, 885 N.E.2d 1053, 1059 (2008). Thus, although not raised by the State, we will address whether plaintiff has forfeited his claims on appeal.

¶ 16 If a defendant fails to raise an issue in his postconviction petition, he may not raise

that issue for the first time on appeal from the summary dismissal of the petition. *People v. Jones*, 213 Ill. 2d 498, 508-09, 821 N.E.2d 1093, 1099 (2004); 725 ILCS 5/122-3 (West 2008). The supreme court has made it clear we are not to excuse forfeiture in an appeal from the summary dismissal of a defendant's initial postconviction petition. *Jones*, 213 Ill. 2d at 508, 821 N.E.2d at 1099 ("our appellate court is not free, as this court is under its supervisory authority, to excuse, in the context of postconviction proceedings, an appellate waiver caused by the failure of a defendant to include issues in his or her postconviction petition"). We find defendant has forfeited those issues raised on appeal for the first time by failing to raise them in his postconviction petition. See *People v. Pendleton*, 223 Ill. 2d 458, 475, 861 N.E.2d 999, 1009 (2006) (issues not included in a defendant's postconviction petition and raised for the first time on appeal are forfeited).

¶ 17 "[W]hen appellate counsel discovers errors not raised by their clients during the summary, first-stage postconviction proceedings, the proper course of action for counsel to take is to file a successive petition in which the newly found claim is properly alleged." *Jones*, 213 Ill. 2d at 509, 821 N.E.2d at 1099. Accordingly, defendant's recourse is to seek leave to file a successive postconviction petition raising the new issues. *Jones*, 213 Ill. 2d at 505-06, 821 N.E.2d at 1097; *People v. Jones*, 211 Ill. 2d 140, 148-49, 809 N.E.2d 1233, 1239 (2004). If fundamental fairness so requires, the trial court will disregard the failure to include the issue in the original postconviction petition and address the argument. *Jones*, 213 Ill. 2d at 505, 821 N.E.2d at 1097. We note defendant does not challenge the trial court's rulings on the issues raised in his postconviction petition.

¶ 18

### III. CONCLUSION

¶ 19 For the reasons stated, we affirm the trial court's judgment. As part of our judgment, we grant the State its \$50 statutory assessment against defendant as costs of this appeal.

¶ 20 Affirmed.