

No. 1-11-0294

**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).

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IN THE  
APPELLATE COURT OF ILLINOIS  
FIRST JUDICIAL DISTRICT

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THE PEOPLE OF THE STATE OF ILLINOIS,	)	Appeal from the
	)	Circuit Court of
Plaintiff-Appellee,	)	Cook County.
	)	
v.	)	No. 96 CR 19601
	)	
CARL WILLIAMS,	)	Honorable
	)	Rosemary Higgins-Grant,
Defendant-Appellant.	)	Judge Presiding.

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JUSTICE FITZGERALD SMITH delivered the judgment of the court.  
Presiding Justice Howse and Justice Lavin concurred in the judgment.

**ORDER**

¶ 1 *Held:* Where defendant failed to address cause and prejudice in his successive *pro se* postconviction petition, the circuit court's denial of leave to file that petition is affirmed, and his mittimus is corrected to reflect the proper sentence.

¶ 2 Defendant Carl Williams appeals from an order of the circuit court denying him leave to file a *pro se* successive postconviction petition for failure to meet the requirements of the cause and prejudice test. On appeal, defendant contends the court erred when it denied him leave to file because his petition presented arguable bases for claims that appellate counsel provided

ineffective assistance on direct appeal and postconviction counsel failed to adequately represent him in his initial postconviction proceeding, thereby demonstrating cause and prejudice to warrant filing the successive petition. In addition, the parties agree that defendant's mittimus should be amended to correctly reflect the sentence imposed by the trial court. We affirm the circuit court's judgment and correct the mittimus.

¶ 3 Following a 1997 bench trial, defendant was convicted of two counts of aggravated criminal sexual assault and sentenced to consecutive terms of 30 years' imprisonment. Defendant was also convicted of home invasion and sentenced to a concurrent term of 30 years' imprisonment, for an aggregate sentence of 60 years' imprisonment. On direct appeal, this court allowed appellate counsel to withdraw pursuant to *Anders v. California*, 386 U.S. 738 (1967), and affirmed defendant's convictions and sentences. *People v. Williams*, No. 1-97-2850 (1998) (unpublished order under Supreme Court Rule 23). The Illinois Supreme Court denied defendant's *pro se* petition for leave to appeal. *People v. Williams*, 181 Ill. 2d 588 (1998).

¶ 4 In September 1998, defendant filed an untimely *pro se* motion to reconsider his sentence arguing that the truth-in-sentencing statute violated the single subject rule of the Illinois Constitution. The circuit court's memorandum of orders (half-sheet) indicates the court denied that motion, noting it lacked jurisdiction.

¶ 5 In June 1999, defendant, through private counsel, filed his initial petition for relief under the Post-Conviction Hearing Act (the Act) (725 ILCS 5/122-1 *et seq.* (West 1998)). Defendant alleged that his trial counsel rendered ineffective assistance because counsel failed to conduct a sufficient pretrial investigation and failed to prepare defendant to testify. Defendant also alleged that his sentence was excessive, an abuse of the trial court's discretion, and constituted cruel and unusual punishment under the Illinois Constitution and eighth amendment of the United States Constitution. Finally, defendant alleged that he was denied a fair and impartial trial because the

trial court was biased against him. The State moved to dismiss defendant's petition. Following a hearing, the circuit court granted the State's motion.

¶ 6 On appeal, defendant abandoned the three allegations raised in his postconviction petition and argued that his petition contained two claims of ineffective assistance of appellate counsel, one of which was counsel's failure to argue that the sentence was excessive. This court found defendant's petition devoid of any allegations of ineffective assistance of appellate counsel, and thus, those issues were waived on appeal. Consequently, we affirmed the judgment of the circuit court dismissing defendant's initial postconviction petition. *People v. Williams*, No. 1-04-2355 (2006) (unpublished order under Supreme Court Rule 23).

¶ 7 On October 7, 2010, defendant filed the instant *pro se* pleadings with the circuit court. The first is entitled "Motion to Vacate Consecutive Sentence" in which defendant solely asserted that the victim committed perjury when she testified. The second pleading is entitled "Motion for Evidence Hearing" in which defendant again stated that the victim committed perjury, and also stated that trial counsel rendered ineffective assistance, without any further elaboration. The third is a four-page document that has no title or label. Therein, defendant alleged that trial counsel rendered ineffective assistance because he did not call certain witnesses, failed to file a motion to reduce sentence, did not prepare defendant for trial, and denied defendant's request to plead guilty immediately before trial. Defendant further alleged that the victim shared personal information about herself with defendant while they were sitting together in the apartment, and he argued those facts show he did not force his way into the apartment. Defendant also submitted his own affidavit in which he repeated some of the allegations from his pleadings, and stated that the issues would have made a difference in the outcome of his case. Defendant did not submit a motion for leave to file his successive petition, nor did he address the required cause and prejudice test in any of his pleadings.

¶ 8 The circuit court treated defendant's *pro se* pleadings as a successive postconviction petition. The court expressly found that defendant made no attempt to satisfy the cause and prejudice test, and therefore, failed to demonstrate that the rule prohibiting successive petitions should be relaxed. The court also found that the factual assertions in defendant's petition were matters of record that were available to him when he filed his initial petition. In addition, the court found that defendant's claims of ineffective assistance of trial counsel were conclusory allegations that were insufficient to warrant relief. Based on these findings, the court concluded that defendant failed to satisfy the cause and prejudice test and denied him leave to file his successive petition.

¶ 9 On appeal, defendant contends the circuit court erred when it denied him leave to file his successive petition because his petition presented arguable bases for claims that appellate counsel provided ineffective assistance on direct appeal and postconviction counsel failed to adequately represent him in his initial postconviction proceeding, thereby demonstrating cause and prejudice to warrant filing the successive petition. Defendant claims he demonstrated cause because the claims raised by postconviction counsel in his initial petition were without merit, and counsel failed to raise a claim of ineffective assistance of appellate counsel. Defendant further claims he established prejudice because appellate counsel should have argued that trial counsel rendered ineffective assistance when he failed to argue that the sentence was excessive. Defendant maintains that a claim of ineffective assistance of trial counsel would have been successful because his sentence is excessive, and if challenged, would have been reduced.

¶ 10 The State contends that defendant did not allege cause and prejudice in his petition, but instead, is raising these arguments for the first time on appeal; therefore, the arguments are forfeited. The State further asserts that defendant's claim is barred by *res judicata* because the underlying issue of whether his sentence was an abuse of discretion has been repeatedly

adjudicated and rejected.

¶ 11 We review the circuit court's denial of leave to file a successive postconviction petition *de novo*. *People v. Gillespie*, 407 Ill. App. 3d 113, 124 (2010). The Act provides a process whereby a prisoner can file a petition asserting that his conviction was the result of a substantial denial of his constitutional rights. 725 ILCS 5/122-1(a)(1) (West 2010); *People v. Petrenko*, 237 Ill. 2d 490, 495-96 (2010). Both the legislature and our supreme court have made it clear that only one postconviction proceeding is contemplated under the Act. *People v. Edwards*, 2012 IL 111711, ¶ 22. It is well settled that successive postconviction petitions are disfavored. *Edwards*, 2012 IL 111711, ¶ 29. Pursuant to section 122-1(f) of the Act (725 ILCS 5/122-1(f) (West 2010)), defendant is prohibited from filing a successive postconviction petition without first obtaining leave of court. *People v. Tidwell*, 236 Ill. 2d 150, 157 (2010). Generally, such leave is granted only where defendant establishes cause for his failure to raise the claim in his initial postconviction proceeding, and prejudice results from that failure. 725 ILCS 5/122-1(f); *Tidwell*, 236 Ill. 2d at 157. "Cause" is defined as "any objective factor, external to the defense, which impeded the petitioner's ability to raise a specific claim in the initial post-conviction proceeding." *People v. Pitsonbarger*, 205 Ill. 2d 444, 462 (2002). Prejudice occurs where the petitioner is "denied consideration of an error that so infected the entire trial that the resulting conviction or sentence violates due process." *Pitsonbarger*, 205 Ill. 2d at 464. It is clearly defendant's burden under the Act to obtain leave of court before his successive postconviction petition can be filed. *Tidwell*, 236 Ill. 2d at 157.

¶ 12 Here, our *de novo* review of the record reveals that defendant did not satisfy the cause and prejudice test required for leave to file a successive postconviction petition. Defendant did not attempt to address either cause or prejudice in any of his *pro se* pleadings. He did not identify any external objective factor that precluded him from raising his allegations in his initial

postconviction proceeding. In his affidavit submitted with his pleadings, defendant made a conclusory statement that the issues would have made a difference in the outcome of his case, but he provided no facts to show he was prejudiced. Nowhere in any of pleadings did defendant acknowledge or make reference to his prior postconviction proceeding. It appears defendant submitted his pleadings as though this were his first postconviction proceeding. Due to defendant's complete failure to address cause and prejudice, we find that the circuit court's denial of leave to file his successive petition was proper.

¶ 13 Moreover, we find that the record belies defendant's argument on appeal that his petition presented claims of ineffective assistance of appellate counsel and inadequate representation by postconviction counsel which demonstrated cause and prejudice. Defendant's petition contains no such allegations. Nor can any allegation in defendant's petition be liberally construed as a presentation of these claims. These arguments, and any assertion of cause and prejudice, are being raised for the first time in this appeal. It is well-established that defendant is precluded from raising issues on appeal that were not alleged in the postconviction petition filed in the circuit court. *People v. Jones*, 211 Ill. 2d 140, 148 (2004). Given the most liberal construction, we find no demonstration of cause and prejudice in defendant's *pro se* successive petition.

¶ 14 The parties agree, however, that defendant's mittimus must be amended to properly reflect the sentences imposed by the trial court. Defendant was sentenced to consecutive prison terms for the two counts of aggravated criminal sexual assault, and a concurrent term for the home invasion conviction. The mittimus incorrectly indicates that the sexual assault sentences are concurrent and the home invasion sentence is consecutive. Pursuant to our authority (Ill. S. Ct. R. 615(b)(1) (eff. Aug. 27, 1999); *People v. McCray*, 273 Ill. App. 3d 396, 403 (1995)), we direct the clerk of the circuit court to amend the mittimus to reflect that defendant's 30-year sentences for his two convictions for aggravated criminal sexual assault are consecutive, and his 30-year

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sentence for home invasion is concurrent.

¶ 15 For these reasons, we affirm the judgment of the circuit court of Cook County denying defendant leave to file his successive postconviction petition, and amend the mittimus.

¶ 16 Affirmed; mittimus corrected.