

No. 1-11-1818

**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-Appellant,	)	Cook County.
	)	
v.	)	No. 95 CR 10687
	)	
WILLIAM BEACH,	)	Honorable
	)	Thomas Hennelly,
Defendant-Appellee.	)	Judge Presiding.

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JUSTICE PUCINSKI delivered the judgment of the court.  
Justices Fitzgerald Smith and Lavin concurred in the judgment.

**ORDER**

- ¶ 1 *Held:* Order granting defendant a new sentencing hearing reversed where the request for same was not included in his original or amended post-conviction petition.
- ¶ 2 The State appeals from an order of the circuit court of Cook County granting defendant William Beach's request for a new sentencing hearing which defendant made for the first time in a motion to reconsider after the circuit court had conducted an evidentiary hearing and denied all the claims set forth in defendant's post-conviction petition. The State contends that the court's

determination was erroneous, and contrary to the express provisions of sections 122-1(f) and 122-3 of the Post-Conviction Hearing Act (Act) (725 ILCS 5/122-1(f), 122-3) (West 2008)).

¶ 3 The record shows, in relevant part, that defendant and numerous codefendants were charged in connection with the March 8, 1995, kidnaping and torture of Gaddis Johnson. A simultaneous, but severed, jury trial was held, during which the following evidence was adduced.

¶ 4 Henry Brown, a high ranking leader of the street gang to which defendant belonged, kidnaped Johnson with the help of other gang members, and took him to a building at 150 North Hermitage in Chicago, where defendant and others were standing outside. Johnson was taken to an apartment in that building, and, pursuant to Brown's orders, was forced into a closet and his clothes removed. After Brown told defendant to "sic" his pit bull on Johnson, defendant forced the pit bull into the closet and then punched Johnson several times. The dog growled and barked, and Johnson subsequently screamed. Codefendant Timothy Belin was ordered to tape Johnson's mouth, and he also participated in burning Johnson with metal objects. Johnson ultimately escaped while being moved to another location, and the parties stipulated that he subsequently died of an unrelated natural cause. Photographs of the injuries that Johnson sustained during this incident, including dog bites and multiple burns, were admitted into evidence.

¶ 5 The jury found defendant guilty, based on accountability, of two counts of aggravated kidnaping. A transcript of the subsequent sentencing hearing has not been included in the record on appeal; however, a summary of the evidence presented was set forth in the order issued on direct appeal. *People v. Beach*, No. 1-98-1061, at 3-5 (1999) (unpublished order under Supreme Court Rule 23). This court noted therein that prior to sentencing defendant to 60 years' imprisonment, the trial court stated that it had considered the nature of the case, defendant's presentence investigation report, the witnesses in aggravation and mitigation, defendant's age and health, defendant's remarks and his potential for rehabilitation. Order at 5.

¶ 6 The record also shows that the jury in Belin's trial was unable to reach a verdict, and, on February 25, 1998, he entered a negotiated guilty plea to aggravated kidnaping for ransom in exchange for an agreed sentence of 25 years' imprisonment. The record further shows that Brown was twice convicted of the charges filed in this case, and sentenced to a term of natural life in prison. However, after his conviction was overturned the second time, he pled guilty to aggravated kidnaping in exchange for a 45-year sentence on July 9, 2009. As to codefendant Ladrena Stewart, Brown's common law wife, the record shows that she was present during the kidnaping and torture of Johnson, then entered a negotiated guilty plea to aggravated battery and received a two-year sentence in exchange for testifying against defendant and the other codefendants at trial.

¶ 7 On direct appeal, defendant argued that (1) his 60-year sentence was disparate compared to Belin's 25-year sentence because Belin's participation and culpability in the offense were greater than his own, and (2) his conviction and sentence for aggravated kidnaping resulting in great bodily harm must be vacated because only one act of kidnaping occurred. *People v. Beach*, No. 1-98-1061 (1999) (unpublished order under Supreme Court Rule 23). This court vacated defendant's conviction for aggravated kidnaping resulting in great bodily harm, and affirmed the circuit court's order in all other respects. Order at 8-9. In doing so, this court noted that a sentence entered pursuant to a guilty plea, such as in Belin's case, does not provide a valid basis of comparison to a sentence imposed after a trial, as in defendant's case. Order at 6-7.

¶ 8 On September 12, 2000, defendant filed a *pro se* petition for relief under the Act (725 ILCS 5/122-1 *et seq.* (West 2008)), alleging that (1) his extended term sentence was unconstitutional under *Apprendi v. New Jersey*, 530 U.S. 466 (2000); (2) his due process rights were violated by allowing a witness to testify to hearsay statements; (3) he was denied effective assistance of counsel; and (4) he was actually innocent of the aggravated kidnaping. The trial

court summarily dismissed defendant's petition on September 29, 2000, and denied his subsequent motion for reconsideration on December 5, 2000.

¶ 9 On January 3, 2001, defendant filed a second motion to reconsider, which included a motion seeking leave to amend his post-conviction petition to add a claim regarding a single-subject rule violation, as well as a claim that a codefendant committed perjury while testifying at his trial. The trial court denied both motions, and this court affirmed those rulings on appeal. *People v. Beach*, No. 1-01-0793 (2002) (unpublished order under Supreme Court Rule 23). In doing so, this court found that defendant was solely appealing the denial of his second motion to reconsider and motion to amend his petition, and was not appealing the dismissal of his post-conviction petition. Order at 3. However, the supreme court issued a supervisory order directing this court to vacate that judgment and deem defendant's appeal as including an appeal of the initial summary dismissal of his petition. After doing so, this court reversed and remanded defendant's cause for further proceedings on his claims of actual innocence and use of perjured testimony. *People v. Beach*, No. 1-01-0793 (2003) (unpublished order under Supreme Court Rule 23).

¶ 10 On remand, defendant's court-appointed counsel filed a supplemental petition adding a claim of ineffective assistance of trial counsel, based on counsel's failure to call Chris Davis as an exculpatory witness. The State filed a motion to dismiss the original and supplemental petitions, and, after a hearing on that motion, the trial court ordered an evidentiary hearing on defendant's claims regarding Davis and Stewart, and dismissed the remaining claims.

¶ 11 At the evidentiary hearing which commenced on May 12, 2009, defendant sought to establish that he was not involved in Johnson's kidnaping and torture through the testimony of Davis and Stewart. The record shows that the evidentiary hearing was initially granted to hear

testimony from Davis and Stewart, but the circuit court twice allowed defendant to re-open the hearing, over the State's objection, to present testimony from Brown and Belin.

¶ 12 On August 27, 2010, Brown testified, *inter alia*, to the judicial proceedings held on his involvement in the incident, which culminated in his July 9, 2009, plea of guilty to aggravated kidnaping in exchange for a 45-year sentence. Brown further testified that on the day of the incident, he was seeking to gain information from Johnson on the whereabouts of Johnson's brother, who had taken \$3,500 and a car from him. Brown stated that he participated in burning Johnson with a hot butter knife and fork, and that others poured bleach and salt on Johnson's wounds, but that it was not upon his orders. According to Brown, defendant did not participate in any way in the torture of Johnson.

¶ 13 On November 22, 2010, Belin testified, *inter alia*, that he pleaded guilty to aggravated kidnaping for ransom in exchange for a 25-year sentence, after the jury was unable to reach a verdict at his initial trial. Belin testified that although he was in the apartment on the day Johnson was tortured, he had no involvement in the incident, and pled guilty at his mother's request in order to put the case behind him. Belin further testified that defendant was not in the apartment on the day of the incident and did not interact with Johnson in any way.

¶ 14 On February 18, 2011, the circuit court denied defendant's claims, finding that defendant failed to sustain his burden, and denied his request for a new trial. In doing so, the court noted that it did not find the witnesses who testified on defendant's behalf credible. The court then asked to see all parties in chambers, where an off the record discussion was held. When they returned, the court asked defense counsel if they were considering the filing of any additional pleadings, such as a motion to reconsider. The court then continued the matter when counsel answered in the affirmative.

¶ 15 On April 29, 2011, post-conviction counsel informed the court that within the 30-day period to do so, defendant had filed a "motion for reconsideration to add additional issue to grant sentencing hearing," and that the State had filed a "motion to deny Petitioner's request to open the hearing and add additional sentencing hearing." The record does not include a copy of either motion.

¶ 16 During the hearing on defendant's motion to reconsider, defense counsel argued that fundamental fairness required that defendant receive a new sentencing hearing because, as was revealed through the evidentiary hearing, Brown and Belin were sentenced to 45 and 25-year sentences, respectively, despite the fact that they were both substantially more involved in the kidnaping and torture of Johnson. The State argued that this sentencing issue was neither meritorious, as this court decided the issue in relation to Belin's sentence on defendant's direct appeal, nor properly before the court, and requested that the court order that the claim be raised in a successive post-conviction petition.

¶ 17 On June 17, 2011, the circuit court granted defendant's motion to reconsider, and ordered a new sentencing hearing, stating as follows:

"I denied the Post Conviction Petition for a New Trial based on ineffective assistance, but I did allow you to amend. I guess we got a little creative and I allowed you to amend for requesting the relief for a new sentencing hearing based on fundamental fairness and deprivation of due process.

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This case has a long history, I've listened to witnesses, a variety of characters have testified in this. I didn't change my mind as to [defendant's] involvement; however, given what had

occurred, it is my opinion that had Judge Fiala [the sentencing judge] had been sitting in my stead and the events that took place with Henry Brown who, as I already put in the record, was the prime mover in this thing, and one of the most despicable characters that I've ever run across in my legal experience. If he was to be sentenced to the sentence that he was – that was imposed on him by agreement of the State, I think fundamental fairness would require and I think Judge Fiala would agree with me, for [defendant's] role in this should not be sentenced to the amount of time that he was sentenced, and I think Judge Fiala would re-open the sentencing hearing for [defendant] to reflect that, and I think he would do that under the guise of fundamental fairness and due process of our constitution.

So, over the State's objection, and I realize we're probably playing a little liberty with the Post-Conviction Statute, but I'm going to grant the request to give [defendant] a new sentencing hearing based upon what's transpired."

¶ 18 The State now appeals the propriety of that order, asserting that the trial court erred in allowing defendant to raise an entirely new claim under the guise of a motion to reconsider, in violation of the express provisions of the Act regarding when and how post-conviction claims may be raised. Because the issue of a trial court's compliance with statutory procedures is a question of law, our review is *de novo*. *People v. Collier*, 387 Ill. App. 3d 630, 633-34 (2008).

¶ 19 In general, the Act contemplates the filing of only one petition (*People v. Guerrero*, 2012 IL 112020, ¶ 15), and expressly provides that any claim of the substantial denial of constitutional

rights not raised in the original or amended petition is waived (725 ILCS 5/122-3 (West 2008)). However, in certain circumstances, defendants may file a successive post-conviction petition containing claims they have not previously raised, so long as they first obtain leave of court. 725 ILCS 5/122-1(f) (West 2008). Leave to file may be granted where defendant demonstrates cause for his failure to bring the claim in his initial post-conviction petition and prejudice as a result of that failure. 725 ILCS 5/122-1(f) (West 2008); *People v. Tidwell*, 236 Ill. 2d 150, 152 (2010). The cause and prejudice test was adopted by the supreme court in *People v. Pitsonbarger*, 205 Ill. 2d 444, 455-59 (2002), and incorporated into the Act in 2004 (*People v. Ortiz*, 235 Ill. 2d 319, 330 (2009)).

¶ 20 In this case, the record shows, and defendant does not contest, that he failed to raise the sentencing issue in either his original or amended petition. Thus, under the clear language of the Act, his recourse was to attempt to raise his claim in a successive post-conviction petition after seeking leave of court to do so. 725 ILCS 5/122-1(f) (West 2008). Here, however, defendant sought to circumvent the procedural strictures of the Act, and attempted to raise this new issue in a motion to reconsider which he filed after an evidentiary hearing had been held on his petition and the court disposed of all of the claims that had been raised therein.

¶ 21 Although defendant may file a motion to reconsider the denial of his post-conviction petition within 30 days (*People v. Dominguez*, 366 Ill. App. 3d 468, 472 (2006)), defendant, here, did not address the claims that were contained in either his original or amended petition, but rather, raised an entirely new claim. The State objected to allowing this procedure and pointed out that a successive post-conviction petition was the proper procedure to follow, but the trial court ruled otherwise over the State's objection. In doing so, the court, which it seemed to recognize, acted outside of the statutory provisions of the Act (725 ILCS 5/122-1(f), 122-3 (West 2008)), and erred in allowing defendant to raise a new claim in a motion to reconsider.

¶ 22 In reaching this determination, we have considered defendant's arguments that post-conviction proceedings are *sui generis*, *i.e.*, unique, are not governed by criminal or civil rules, and that the trial court had jurisdiction over the motion that was a "logical outgrowth" of the post-conviction proceeding and was invited by the judge. In so arguing, defendant relies on *People ex. rel Daley v. Fitzgerald*, 123 Ill. 2d 175, 183 (1988), in which the supreme court held that a trial judge has the discretion to authorize a discovery deposition in post-conviction proceedings, but only after a hearing for good cause shown. In doing so, the court noted that post-conviction proceedings are *sui generis*, and, accordingly, the rules governing discovery in civil and criminal cases do not apply to such proceedings. *Daley*, 123 Ill. 2d at 181-83. From this, defendant analogizes that the circuit court had the inherent authority to order the new sentencing hearing when the judge realized that the original sentencing hearing was fundamentally unfair and denied defendant due process.

¶ 23 We disagree with defendant's conclusion that the reasoning in *Daley* extends to the case at bar, and with his premise that the original sentencing hearing was unfair and denied him due process. As we noted on direct appeal, the trial court properly considered all of the applicable factors in aggravation and mitigation prior to imposing defendant's sentence and rejected defendant's contrary allegations. *People v. Beach*, No. 1-98-1061, at 5, 8 (1999) (unpublished order under Supreme Court Rule 23). Further, in *Daley*, the supreme court noted that the Act did not speak to the issue of evidence depositions, but also did not prohibit them. *Daley*, 123 Ill. 2d at 179, 183. Here, in contrast, the Act specifically addresses what procedure a defendant must follow in order to attempt to raise a claim which he did not include in his original or amended petition. 725 ILCS 5/122-1(f) (West 2008). Accordingly, we find the reasoning in *Daley* inapplicable to this case.

¶ 24 We have also considered defendant's argument that the trial court's decision is supported by section 122-5 of the Act, which provides, *inter alia*, that the circuit court has the discretion to "make such order as to amendment of the petition \*\*\* as is generally provided in civil cases," (725 ILCS 5/122-5 (West 2008)), in conjunction with section 2-616(c) of the Code of Civil Procedure (Code) (735 ILCS 5/2-616(c) (West 2010)), which allows a pleading to be amended at any time, before or after judgment, to conform the pleadings to the proofs. Defendant contends that because much proof was adduced during the evidentiary hearing regarding Brown and Belin's substantially lessened sentences, the trial court made a "wise" decision in ordering a new sentencing hearing.

¶ 25 In so arguing, defendant relies on *People v. Washington*, 256 Ill. App. 3d 445 (1993), *aff'd on other grounds*, 171 Ill. 2d 475 (1996) (holding that a claim of actual innocence may be recognized in a post-conviction petition). In *Washington*, the circuit court denied defendant any relief at the conclusion of a post-conviction evidentiary hearing, but granted defendant's subsequent motion seeking leave to amend his petition to conform the pleadings to the proof offered at the evidentiary hearing by adding a claim for newly discovered evidence which would exonerate him. 256 Ill. App. 3d at 445-46. This court affirmed that ruling on appeal, and, in doing so, noted the interplay between section 122-5 of the Act and section 2-616(c) of the Code. *Washington*, 256 Ill. App. 3d at 449. This court also reasoned that allowing an amendment which adds a new theory of recovery is not an abuse of discretion if the other party is not taken by surprise, and pointed out that the new claim related to the claims in defendant's original petition. *Washington*, 256 Ill. App. 3d at 449-50.

¶ 26 *Washington* is legally and factually distinguishable from the case at bar. Most notably, *Washington* was decided in 1993, prior to *Pitsonbarger* and to the incorporation of the cause and prejudice test into the Act. Accordingly, the procedural hurdles which defendant in the case at

bar faces, were not present in *Washington*. Moreover, the witness that testified at the evidentiary hearing in *Washington* implicated someone other than defendant in the murder of the victim. *Washington*, 256 Ill. App. 3d at 446. On appeal, this court noted that the new evidence claim defendant sought to raise was related to the claims in his original petition, and that the State had cross-examined the witness at the evidentiary hearing with regard to that new evidence. *Washington*, 256 Ill. App. 3d at 450.

¶ 27 Here, in contrast, Brown and Belin testified at the evidentiary hearing that defendant had no involvement in the kidnaping and torture of Johnson. The substance of their testimony did not deal with the details of their guilty pleas or the contents of their presentence investigations or other evidence presented in mitigation prior to their sentencing. Thus, *Washington* is factually distinguishable from the case at bar, and does not support the action taken by the court.

¶ 28 In addition, the record shows that Belin entered his plea in 1998, and Brown did likewise on July 9, 2009. The evidentiary hearing on defendant's petition commenced on May 12, 2009, and was continued for Brown and Belin's testimony. Brown testified on August 27, 2010, and Belin testified on November 22, 2010, and, during that testimony, defense counsel elicited information on their negotiated sentences on direct examination. The record reflects that defendant was aware of Belin's negotiated sentence well before November 22, 2010, as it formed the basis of an issue he raised on direct appeal; and given the public availability of Brown's negotiated sentence and the fact that defendant called him as a witness, it is readily apparent that the sentencing dispositions of his codefendants was not newly discovered at the hearing. Thus the principle of newly discovered evidence recognized in *Washington* has no applicability to this case.

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¶ 29 For the foregoing reasons, we find that the trial court erred in allowing defendant to raise a sentencing claim for the first time in a motion to reconsider, and we, therefore, reverse the trial court's order granting defendant's motion to reconsider and ordering a new sentencing hearing.

¶ 30 Reversed.