

No. 1-11-3452

**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.	)	Nos. 05 CR 24130
	)	06 CR 7146
	)	
JERMAINE CARPENTER,	)	Honorable
	)	Stanley Sacks,
Defendant-Appellant.	)	Judge Presiding.

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PRESIDING JUSTICE LAVIN delivered the judgment of the court.  
Justices Fitzgerald Smith and Epstein concurred in the judgment.

**ORDER**

¶ 1 *Held:* Defendant, who was civilly committed after completing his penitentiary sentence, lacked standing to seek post-conviction relief.

¶ 2 Defendant Jermaine Carpenter appeals from an order of the circuit court of Cook County denying him leave to file a successive *pro se* petition for relief under the Post-Conviction Hearing Act (Act) (725 ILCS 5/122-1(f) (West 2010)). He contends that the circuit court committed reversible error by dismissing his petition as frivolous and patently without merit and as insufficient under the cause-and-prejudice test.

¶ 3 On January 29, 2007, defendant pleaded guilty to aggravated criminal sexual abuse and aggravated battery of a correctional officer in two separate cases in exchange for a seven-year sentence of imprisonment. Defendant filed a timely motion to withdraw his guilty plea and vacate his sentence, but he withdrew his motion after the trial court appointed counsel to represent him.

¶ 4 On March 16, 2009, prior to his scheduled mandatory supervised release (MSR), the State filed a petition to commit defendant as a sexually violent person under the Sexually Violent Persons Commitment Act (SVPCA) (725 ILCS 207/1 *et seq.* (West 2008)). Defendant was then civilly committed as a sexually violent person and transferred to the Department of Human Services where he remains presently and indefinitely.

¶ 5 On January 15, 2010, defendant filed a *pro se* post-conviction petition alleging, *inter alia*, that his involuntary guilty plea violated his due process rights because the trial court failed to inform him during the plea hearing that the State could file a sexually violent person petition against him, and that trial counsel was ineffective for failing to inform him of the same. The circuit court summarily dismissed the petition as frivolous and patently without merit. We affirmed that dismissal on appeal, finding that defendant lacked standing to challenge his civil commitment as a sexually violent person through a post-conviction petition, and, notwithstanding, that he failed to provide adequate documentary support of his constitutional claims as required by the Act (725 ILCS 5/122-2 (West 2008)). *People v. Carpenter*, 2011 IL App (1st) 100927-U.

¶ 6 On July 28, 2011, defendant filed the subject *pro se* "petition" for leave to file a successive post-conviction petition. In that petition, defendant asserted cause for failing to raise certain claims in his initial post-conviction petition where he discovered helpful information two months after it was dismissed, and resulting prejudice where the additional claims would

strengthen his initial claim that he did not bargain for civil commitment under the SVPCA when he pleaded guilty.

¶ 7 On August 2, 2011, without leave of court, defendant filed a successive *pro se* post-conviction, claiming that the SVPCA is unconstitutional because it violates the provisions of the United States and Illinois Constitutions prohibiting *ex post facto* laws and double jeopardy, and the separation of powers doctrine of the Illinois Constitution.

¶ 8 In a written order, entered on September 23, 2011, the circuit court considered both filings and specifically denied defendant leave to file his successive petition, finding that he failed to meet the cause-and-prejudice test and that the petition was frivolous and patently without merit.

¶ 9 On appeal, defendant maintains that he has established cause and prejudice sufficient to justify a successive petition. He identifies the objective factor that impeded his ability to raise the claims in his initial petition to be that he was not allowed to have his allegation of ineffective assistance of trial counsel "addressed." Defendant asserts that had post-conviction counsel been appointed to develop the ineffective assistance of counsel claim in his initial petition, he could have, in one way, addressed some of the issues he now raises through a claim of ineffective assistance of counsel for counsel's failure to advance the claims. He also asserts that he was prejudiced because his indefinite civil commitment pursuant to the SVPCA "amended" the sentence for which he originally bargained.

¶ 10 The Act contemplates the filing of only one post-conviction petition without leave of court (725 ILCS 5/122-1(f) (West 2010)), and expressly provides that all issues actually decided on direct appeal or in an original post-conviction petition are barred by *res judicata*, and all issues that could have been raised on direct appeal or in an original post-conviction petition, but were not, are waived (725 ILCS 5/122-3 (West 2010)). *People v. Nicholas*, 2013 IL App (1st)

103202, ¶ 31. Moreover, leave of court may be granted only if defendant demonstrates cause for his failure to raise a claim in his initial post-conviction petition and prejudice results from that failure. 725 ILCS 5/122-1(f) (West 2010); *People v. Thompson*, 383 Ill. App. 3d 924, 928 (2008). We review the circuit court's denial of leave to file a successive post-conviction petition *de novo*. *People v. Gillespie*, 407 Ill. App. 3d 113, 124 (2010). Because we review the court's judgment and not its reasoning, we may affirm on any basis supported by the record if the judgment is correct. *People v. Anderson*, 401 Ill. App. 3d 134, 138 (2010).

¶ 11 In this case, the circuit court denied defendant leave to file a successive post-conviction petition on the merits, without first addressing whether he had standing to pursue post-conviction relief because he had served his sentence of imprisonment on the underlying convictions prior to filing the successive post-conviction petition. *People v. Dent*, 408 Ill. App. 3d 650, 652 (2011). Standing is a party's right to assert a legal claim or seek judicial enforcement of a duty or right. *People v. Steward*, 406 Ill. App. 3d 82, 90 (2010). Section 122-1(a) of the Act (725 ILCS 5/122-1(a) (West 2010)) provides that any person "imprisoned in the penitentiary" may institute a post-conviction proceeding. *Dent*, 408 Ill. App. 3d at 652.

¶ 12 As noted above, defendant completed his penitentiary sentence, and, prior to serving his MSR, was civilly committed under the SVPCA. In affirming the circuit court's dismissal of defendant's initial post-conviction petition, we found that defendant's collateral claims could not be considered because he was in civil custody under the SVPCA and thus not "imprisoned in the penitentiary" within the meaning of the Act. *People v. Carpenter*, 2011 IL App (1st) 100927-U, ¶ 10. In doing so, we relied on our prior decision in *Steward*, 406 Ill. App. 3d at 92, that the Act was not a viable mechanism to challenge civil commitment under the SVPCA, and that a person challenging his commitment as a sexually violent person lacks standing to file a post-conviction petition because he is not "imprisoned in a penitentiary" within the meaning of the Act. *People*

*v. Carpenter*, 2011 IL App (1st) 100927-U, ¶ 10. In *Steward*, 406 Ill. App. 3d at 94, we also noted that in order to be within the realm of the Act, defendant must currently be on MSR, and that a toll of that term does not satisfy the "imprisoned in the penitentiary" requirement of the Act.

¶ 13 At present, defendant remains in civil custody under the SVPCA (*In re Commitment of Phillips*, 367 Ill. App. 3d 1036, 1042 (2006)), and we discern no basis to depart from our decision in *Steward* (accord *People v. Vinokur*, 2011 IL App (1st) 090798, ¶ 14)), that defendant lacks standing to proceed under the Act. *People v. Lawton*, 212 Ill. 2d 285, 297 (2004). Based on this determination, we need not address the merits of his post-conviction claims. *Dent*, 408 Ill. App. 3d at 654-55.

¶ 14 For the reasons stated, we affirm the judgment of the circuit court of Cook County denying defendant leave to file a successive *pro se* post-conviction petition.

¶ 15 Affirmed.