

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).

2013 IL App (4th) 110896-U

NO. 4-11-0896

IN THE APPELLATE COURT

OF ILLINOIS

FOURTH DISTRICT

FILED  
March 26, 2013  
Carla Bender  
4<sup>th</sup> District Appellate  
Court, IL

THE PEOPLE OF THE STATE OF ILLINOIS,	)	Appeal from
Plaintiff-Appellee,	)	Circuit Court of
v.	)	Vermilion County
NICK L. LARRABEE,	)	No. 05CF251
Defendant-Appellant.	)	
	)	Honorable
	)	Michael D. Clary,
	)	Judge Presiding.

JUSTICE APPLETON delivered the judgment of the court.  
Justices Knecht and Harris concurred in the judgment.

**ORDER**

¶ 1 *Held:* In the absence of a showing of "cause" within the meaning of section 122-1(f) of the Post-Conviction Hearing Act (725 ILCS 5/122-1(f) (West 2010)), the trial court was correct to deny defendant leave to file a successive postconviction petition.

¶ 2 Defendant, Nick L. Larrabee, moved for leave to file a successive postconviction petition. See 725 ILCS 5/122-1(f) (West 2010). The trial court denied leave. He appeals.

¶ 3 The office of the State Appellate Defender (OSAD) moves to withdraw from representing defendant in this appeal, because OSAD does not believe that any reasonable argument could be made in support of this appeal. See *Pennsylvania v. Finley*, 481 U.S. 551 (1987); *People v. Lee*, 251 Ill. App. 3d 63 (1993). We have notified defendant of his right to respond, by a certain date, with additional points and authorities, but he has not done so.

¶ 4 In our *de novo* review, we agree with OSAD that defendant failed to show "cause"

within the meaning of section 122-1(f) of the Post-Conviction Hearing Act (725 ILCS 5/122-1(f) (West 2010)) and that it would be impossible to argue in good faith that he had made such a showing. Therefore, we grant OSAD's motion to withdraw, and we affirm the trial court's judgment.

¶ 5

## I. BACKGROUND

¶ 6 On October 31, 2005, defendant entered an open plea of guilty to one count of aggravated battery of a child under the age of 13 (720 ILCS 5/12-4.3(a) (West 2004)).

¶ 7 On February 2, 2006, the trial court sentenced defendant to 10 years' imprisonment.

¶ 8 He did not take a direct appeal.

¶ 9 On July 23, 2007, he filed a postconviction petition alleging that (1) no one had advised him he would have to serve 85% of his prison sentence, (2) no one had advised him he would have to serve a term of mandatory supervised release (MSR), and (3) defense counsel had provided ineffective assistance by failing to advise him of (1) and (2). The trial court summarily dismissed the petition, and we affirmed the summary dismissal. *People v. Larrabee*, No. 4-07-0779 (June 13, 2008) (unpublished order under Supreme Court Rule 23).

¶ 10 On September 1, 2011, defendant filed a motion for leave to file a successive postconviction petition. In the proposed successive petition, he made essentially five claims. First, he claimed the trial court failed to admonish him, in the guilty-plea hearing, that he would have to serve three years of MSR even if he pleaded guilty. Second, he claimed that, after imposing the sentence, the court failed to give him all the admonitions that Illinois Supreme Court Rule 605(b) (eff. Oct. 1, 2001) required, omitting the admonition regarding a motion for a reduction of the sentence. Third, he claimed that "[n]ew evidence ha[d] arise[n] that would qualify [him] for relief," although he did not say what this new evidence was. Fourth, he claimed his guilty plea was not

knowing and intelligent, as was evident from some confusion he expressed in the transcript of the guilty-plea hearing. Fifth, he claimed his attorney had provided ineffective assistance. Specifically, defendant wrote:

"Defendant Larrabee has shown, by the record, that his counsel was not effective because (1) he put words in the defendants mind and numbers of sentencing years. Then he changed the story of the plea hearing very often throughout the plea. (2) During sentencing he let the court sentence defendant without making certain the judge told defendant of his 605(b) admonishments being; he prejudiced defendant by not informing him that he had a right to file a motion to reconsider sentence. Sup. Ct. Rule 605(b)."

¶ 11 On September 6, 2011, the trial court denied leave to file the proposed successive petition. In its order, the court stated:

"The Defendant filed a Post-Conviction Petition on July 23, 2007 alleging these same issues which was denied and upheld on appeal. He has filed numerous other motions and pleadings raising similar issues which have all been denied.

There is no new evidence presented with this Motion. The Defendant presents only arguments and copies of transcripts from his hearings. These issues have already been resolved in this case. For this reason the Motion for Leave to File a Successive Post-Conviction Petition is denied."

¶ 12 This appeal followed.

¶ 13 II. ANALYSIS

¶ 14 We decide *de novo* whether the trial court was correct to deny leave to file a successive postconviction petition. *People v. Edgeston*, 396 Ill. App. 3d 514, 518 (2009).

¶ 15 According to section 122-1(f) of the Post-Conviction Hearing Act (725 ILCS 5/122-1(f) (West 2010)), a trial court should grant such leave only if the defendant shows both "cause" and "prejudice." Section 122-1(f) provides:

"(f) Only one petition may be filed by a petitioner under this Article without leave of the court. Leave of court may be granted only if a petitioner demonstrates cause for his or her failure to bring the claim in his or her initial post-conviction proceedings and prejudice results from that failure. For purposes of this subsection (f): (1) a prisoner shows cause by identifying an objective factor that impeded his or her ability to raise a specific claim during his or her initial post-conviction proceedings; and (2) a prisoner shows prejudice by demonstrating that the claim not raised during his or her initial post-conviction proceedings so infected the trial that the resulting conviction or sentence violated due process." *Id.*

¶ 16 In his motion for leave to file a successive postconviction petition, defendant does not identify any objective factor that impeded his ability to raise, in his initial petition, the claims that he now raises in his proposed successive petition. In the absence of this showing of cause, section 122-1(f) obliged the trial court to deny him leave to file the proposed successive petition.

¶ 17

### III. CONCLUSION

¶ 18 For the foregoing reasons, we grant OSAD's motion to withdraw, and we affirm the trial court's judgment.

¶ 19 Affirmed.