

Place, a club and tavern in Decatur, Illinois. In January 2006, the State charged defendant by information with three counts of first degree murder (720 ILCS 5/9-1(a)(1), (a)(2) (West 2004)) for Renier's death. The charges specifically alleged defendant used a handgun to shoot Renier. After a September 2006 trial, a jury found defendant guilty of first degree murder and answered a special interrogatory, indicating the State had not proved beyond a reasonable doubt defendant had personally discharged a firearm that proximately caused Renier's death. Defendant filed several posttrial motions, all of which the trial court denied. In August 2007, the court sentenced defendant to 50 years' imprisonment. Defendant filed a motion to reconsider and reduce his sentence, which the court also denied.

¶ 5 Defendant appealed, arguing (1) the jury's negative answer to the special interrogatory was fatal to the guilty verdict and (2) the State failed to prove defendant's guilt beyond a reasonable doubt. This court affirmed defendant's first-degree-murder conviction and sentence. *People v. Reed*, 396 Ill. App. 3d 636, 919 N.E.2d 1106 (2009). Defendant filed a petition for leave to appeal, which the Illinois Supreme Court denied. *People v. Reed*, 236 Ill. 2d 534, 930 N.E.2d 414 (2010). Defendant also filed a petition for *certiorari* with the United States Supreme Court, which was also denied. *Reed v. Illinois*, ___ U.S. ___, 131 S. Ct. 485 (2010).

¶ 6 In December 2010, defendant filed a motion to dismiss the information, asserting the prosecutor failed to sign the information for one count of first degree murder and have the signature notarized, and thus the information was void. In February 2011, the trial court denied defendant's motion to dismiss, and defendant appealed.

¶ 7 In January 2011, defendant filed his initial postconviction petition, arguing he was denied his right to a fair trial by (1) the way the trial court handled the jury's questions and

requests and its allowance of the special interrogatory; (2) the court's failure to properly admonish the jurors under Illinois Supreme Court Rule 431 (eff. May 1, 1997); (3) his trial counsel's failure "to adequately and competently represent him"; and (4) the evidence supporting his claim of actual innocence. In a February 2011 written order, the trial court dismissed defendant's initial postconviction petition as frivolous and patently without merit. Defendant appealed the dismissal.

¶ 8 This court consolidated defendant's appeals from the denial of his motion to dismiss the information and the first-stage dismissal of his postconviction petition into one case with a single case number. *People v. Reed*, 2012 IL App (4th) 110127-U, ¶ 13. In the consolidated case, OSAD moved to withdraw as counsel under *Pennsylvania v. Finley*, 481 U.S. 551 (1987). *Reed*, 2012 IL App (4th) 110127-U, ¶ 14. This court granted OSAD's motion and affirmed the Macon County circuit court's denial of defendant's motion to dismiss the information and dismissal of defendant's initial postconviction petition. *Reed*, 2012 IL App (4th) 110127-U, ¶ 47. Defendant filed a petition for leave to appeal, which the Illinois Supreme Court denied. *People v. Reed*, 2012 IL 114904, 981 N.E.2d 1001.

¶ 9 On March 28, 2012, defendant filed a motion for leave to file a successive postconviction petition and the proposed successive postconviction petition. On April 18, 2012, the trial court entered a written order, denying defendant's request to file a successive postconviction petition. The order noted defendant had alleged the reason his matters were not included in the original postconviction petition were institutional lockdowns, which did not meet the cause-and-prejudice test. On May 1, 2012, defendant filed a timely notice of appeal from the court's April 18, 2012, denial of his motion for leave to file a successive postconviction petition.

¶ 10 In May 2013, OSAD filed a motion to withdraw as counsel on defendant's appeal from the denial of his request to file a successive postconviction petition. OSAD asserts it has thoroughly reviewed the record and concludes an appeal in this case would be frivolous. The motion also addresses defendant's arguments and sets forth the case's procedural history. OSAD's proof of service indicates defendant was provided with a copy of the motion, and this court granted defendant to and including June 24, 2013, to file additional points and authorities. On defendant's motion, we extended the time for filing additional points and authorities to July 30, 2013. Defendant filed a response, asserting he had established cause because he was completely deprived of any access to writing material and legal assistance. He also noted the fellow inmate writing his initial postconviction petition ran out of ink and defendant could not provide him any writing supplies. This court, on its own accord, reinstated the docketing schedule, allowing the State to file an appellee brief and defendant to file a reply brief. In August 2013, the State filed its brief, and in September 2013, defendant filed his reply brief.

¶ 11

II. ANALYSIS

¶ 12

A. Standard for Withdrawal of Counsel

¶ 13 In *Finley*, 481 U.S. at 557, the United States Supreme Court addressed the withdrawal of counsel in collateral postconviction proceedings and held the United States Constitution does not require the full protection of *Anders v. California*, 386 U.S. 738 (1967), with such motions. The Court noted the respondent did not present a due-process violation when her counsel withdrew because her state right to counsel had been satisfied. *Finley*, 481 U.S. at 558. Thus, state law dictates counsel's performance in a postconviction proceeding. The Supreme Court of Illinois has held that, in a postconviction proceeding, the Post-Conviction

Hearing Act (Postconviction Act) (see 725 ILCS 5/art. 122 (West 2012)) entitles a defendant to reasonable representation. *People v. Guest*, 166 Ill. 2d 381, 412, 655 N.E.2d 873, 887 (1995).

¶ 14 In *People v. McKenney*, 255 Ill. App. 3d 644, 646, 627 N.E.2d 715, 717 (1994), the Second District granted appellate counsel's motion to withdraw as counsel on an appeal from a postconviction petition, finding counsel's representation was reasonable. There, the motion stated counsel had reviewed the record and found no issue that would merit relief. *McKenney*, 255 Ill. App. 3d at 646, 627 N.E.2d at 717. The motion also provided the procedural history of the case and the issues raised in the defendant's petition. *McKenney*, 255 Ill. App. 3d at 645, 627 N.E.2d at 716.

¶ 15 B. Leave To File a Successive Postconviction Petition

¶ 16 OSAD asserts defendant's motion for leave to file a successive postconviction petition cannot satisfy the cause-and-prejudice test of section 122-1(f) of Postconviction Act (725 ILCS 5/122-1(f) (West 2012)). Defendant disagrees and claims his motion did meet the cause-and-prejudice test. When the trial court has not held an evidentiary hearing, this court reviews *de novo* the denial of a defendant's motion for leave to file a successive postconviction petition. See *People v. Gillespie*, 407 Ill. App. 3d 113, 124, 941 N.E.2d 441, 452 (2010).

¶ 17 The Postconviction Act (725 ILCS 5/art. 122 (West 2012)) grants criminal defendants a means by which they can assert their convictions resulted from a substantial denial of their rights under the United States Constitution, the Illinois Constitution, or both. *People v. Guerrero*, 2012 IL 112020, ¶ 14, 963 N.E.2d 909. Relief under the Postconviction Act is only available for constitutional deprivations that occurred at the defendant's original trial. *Guerrero*, 2012 IL 112020, ¶ 14, 963 N.E.2d 909. Moreover, the Postconviction Act generally limits a

defendant to one postconviction petition and expressly states any claim cognizable under the Postconviction Act that is not raised in the original or amended petition is deemed forfeited. *Guerrero*, 2012 IL 112020, ¶ 15, 963 N.E.2d 909 (citing 725 ILCS 5/122-3 (West 2006)). However, section 122-1(f) of the Postconviction Act (725 ILCS 5/122-1(f) (West 2012)) provides the following:

"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."

Thus, for a defendant to obtain leave to file a successive postconviction petition, both prongs of the cause-and-prejudice test must be satisfied. *Guerrero*, 2012 IL 112020, ¶ 15, 963 N.E.2d 909. In determining whether a defendant has established cause and prejudice, the trial court may review the " 'contents of the petition submitted.' " *People v. Gutierrez*, 2011 IL App (1st) 093499, ¶ 12, 954 N.E.2d 365 (quoting *People v. Tidwell*, 236 Ill. 2d 150, 162, 923 N.E.2d 728, 735 (2010)).

¶ 18 In his motion for leave to file a successive postconviction petition, defendant asserted the following impeded his ability to raise certain claims in his initial postconviction petition: (1) during his initial postconviction filing, he was in disciplinary segregation and isolation and without the legal materials, assistance, and information that he now has; (2) Menard Correctional Center is frequently on lockdown, during which legal assistance, writing implements, and copies are unavailable; and (3) his initial postconviction petition was drafted by another inmate who did not have all of the information or materials needed to file a proper postconviction petition. In his response to counsel's *Finley* motion, defendant also alleges for the first time the inmate that drafted his petition could not include the issue he seeks to raise because the inmate "ran out of ink" and (2) defendant was completely deprived of access to writing materials in segregation. Our supreme court has repeatedly held any postconviction issues to be reviewed must be presented in the trial court, and a defendant may not raise an issue for the first time while the matter is on review. See *People v. Petrenko*, 237 Ill. 2d 490, 502-03, 931 N.E.2d 1198, 1206 (2010) (addressing initial postconviction petitions). We disagree with defendant as the two aforementioned allegations were raised under a liberal reading of his motion. Thus, we do not consider defendant's new allegations.

¶ 19 This court has rejected the argument the cause prong of the cause-and-prejudice test was satisfied when the defendant alleged a correctional facility's lockdown prevented him from seeking assistance from a law clerk in (1) amending his initial postconviction petition to include the claim and (2) preparing an affidavit explaining why he was unable to attach supporting documentation. *People v. Croom*, 2012 IL App (4th) 100932, ¶ 27, 975 N.E.2d 1107. We agreed with the State that the defendant's reasoning for not including the issue in his initial

petition was not "an 'objective factor external to the defense, which impeded [defendant's] ability to raise [this] specific claim at the initial postconviction petition' (citing [*People v. Pitsonbarger*, 205 Ill. 2d [444,] 46[0], 793 N.E.2d [609,] 62[7] [(2002)])." *Croom*, 2012 IL App (4th) 100932, ¶ 26, 975 N.E.2d 1107.

¶ 20 Moreover, in addressing whether a delay in filing the initial postconviction petition was due to a prisoner's culpable negligence (see 725 ILCS 5/122-1(c) (West 1998)), the First District has stated the following:

"If a petitioner was placed in segregation due to his own misconduct, then his failure to file in a timely manner due to his segregation status could well constitute culpable negligence. Engaging in intentional misconduct which would, with reasonably foreseeable certainty, result in prison action that would prevent one from filing in a timely manner would in all likelihood fall within the definition of culpable negligence as 'negligence of a gross and flagrant character.' Thus, where segregation is at issue, the petitioner must allege that his placement in segregation was through no fault of his own." *People v. Scullark*, 325 Ill. App. 3d 876, 887-88, 759 N.E.2d 565, 577-78 (2001).

In *Pitsonbarger*, 205 Ill. 2d at 462, 793 N.E.2d at 622, our supreme court noted the objective factor that impeded the petitioner's ability to earlier raise the claim must be "external to the defense." Thus, like culpable negligence, the defendant would have to allege the segregation was not due to the prisoner's own misconduct to establish the segregation was external to the defense.

¶ 21 Also, in establishing culpable negligence, a bald assertion a lockdown hindered an inmate's ability to make a timely request for postconviction relief has been found insufficient. *People v. Walker*, 331 Ill. App. 3d 335, 341-42, 772 N.E.2d 758, 764 (2002). The *Walker* court noted the defendant never specified when the lockdown occurred and whether the lockdown was in effect during the applicable filing period. *Walker*, 331 Ill. App. 3d at 341-42, 772 N.E.2d at 764. The lack of such allegations left the court to speculate about the lockdown's role in the defendant's delayed filing. *Walker*, 331 Ill. App. 3d at 342, 772 N.E.2d at 764. With seeking leave to file a successive petition, the relevancy of segregation and lockdowns to the failure to include an issue in an initial postconviction is even less clear as the prison event clearly did not impede the defendant's ability to file the initial postconviction petition. Thus, when establishing cause, the defendant must provide even more specific information to show the segregation or lockdown impeded his or her ability to raise the specific claim during the initial proceedings.

¶ 22 In this case, the defendant provided little information in his motion for leave to file a successive postconviction petition about his segregation. He described it as "disciplinary," which indicates the segregation was a result of defendant's own conduct. Thus, defendant did not show his segregation was an objective factor external to the defense. See *Croom*, 2012 IL App (4th) 100932, ¶ 27, 975 N.E.2d 1107; *Scullark*, 325 Ill. App. 3d at 887-88, 759 N.E.2d at 577-78. Regarding lockdowns, defendant just asserts they are a consistent and ongoing problem at the correctional center in which he is housed. As in *Walker*, defendant never specified when the lockdowns were and how they impeded his ability to raise the *specific* issues he now seeks to raise. Moreover, we note that, despite the alleged lockdowns, defendant was able to file his initial postconviction petition. Thus, defendant has not shown the lockdowns impeded his ability

to include his new claims in his initial postconviction petition. Last, defendant asserts the inmate who drafted his initial petition did not have all of the information or materials needed to file a proper postconviction petition. Defendant fails to explain how the inmate's lack of information and materials were an objective factor external to the defense. Additionally, in his briefs, defendant emphasizes his lack of writing materials due to segregation and lockdowns. However, defendant does not explain when and for how long he lacked such materials. Due to the vague nature of defendant's reasoning for not raising his issues in his initial postconviction test, we are left with a great deal of speculation, which is insufficient to establish cause under the cause-and-prejudice test. See *People v. Edwards*, 2012 IL 111711, ¶24, 969 N.E.2d 829 (noting the defendant must submit enough documentation to allow the trial court to determine whether leave to file a successive petition should be granted).

¶ 23 Accordingly, the trial court properly found defendant's reasoning for not raising his new claims in his initial postconviction petition did not satisfy the cause prong of the cause-and-prejudice test. Since we have concluded defendant did not satisfy the cause prong of the cause-and-prejudice test, we need not address prejudice as defendant's failure to establish cause precludes him from filing the successive postconviction petition. See *People v. Brown*, 225 Ill. 2d 188, 207, 866 N.E.2d 1163, 1174 (2007).

¶ 24 III. CONCLUSION

¶ 25 For the reasons stated, we agree with OSAD no meritorious issues exist and find OSAD has provided defendant with reasonable representation. Thus, we grant OSAD's motion and affirm the Macon County circuit court's denial of defendant's motion for leave to file a successive postconviction petition. As part of our judgment, we award the State its \$50 statutory

assessment against defendant as costs of this appeal.

¶ 26 Affirmed.