

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) 120484-U

NO. 4-12-0484

IN THE APPELLATE COURT

OF ILLINOIS

FOURTH DISTRICT

FILED  
August 29, 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.	)	Champaign County
DEBRA M. STAPLE, a/k/a DEBRA M. BROWN,	)	No. 08CF818
a/k/a DEBRA M. MILES,	)	
Defendant-Appellant.	)	Honorable
	)	Thomas J. Difanis,
	)	Judge Presiding.

JUSTICE KNECHT delivered the judgment of the court.  
Justices Appleton and Pope concurred in the judgment.

**ORDER**

¶ 1 *Held:* The appellate court granted the office of the State Appellate Defender's motion to withdraw as appellate counsel pursuant to *Pennsylvania v. Finley*, 481 U.S. 551 (1987), and affirmed the trial court's summary dismissal of defendant's successive postconviction petition.

¶ 2 This appeal comes to us on the motion of the office of the State Appellate Defender (OSAD) to withdraw as counsel on appeal on the ground no meritorious issues can be raised in this case. We agree and affirm.

¶ 3 I. BACKGROUND

¶ 4 We addressed the factual background of defendant's criminal case in *People v. Staple*, 402 Ill. App. 3d 1098, 932 N.E.2d 1064 (2010). Only those facts necessary for this appeal are set forth.

¶ 5 In January 2009, a jury convicted defendant, Debra M. Staple, of (1) aggravated battery (720 ILCS 5/12-4(b)(18) (West 2008) and (2) obstructing justice (720 ILCS 5/31-4(a) (West 2008)). In February 2009, the trial court sentenced defendant to concurrent 10-year and 3-year terms of imprisonment for aggravated battery and obstructing justice, respectively. In April 2009, the court denied defendant's motion to reduce sentence and defendant filed a timely notice of appeal.

¶ 6 On direct appeal, defendant argued (1) the trial court erred by denying her motion to continue to retain private counsel and (2) the court failed to comply with Illinois Supreme Court Rule 431(b) (eff. May 1, 2007) during *voir dire*.

¶ 7 In May 2010, while defendant's direct appeal was pending in this court, defendant filed a *pro se* postconviction petition pursuant to the Post-Conviction Hearing Act (Act) (725 ILCS 5/122-1 to 122-7 (West 2010)) arguing (1) she was denied her right to hire a private attorney and (2) the State failed to prove her guilty of aggravated battery beyond a reasonable doubt. In June 2010, the trial court summarily dismissed the petition as frivolous and patently without merit. Defendant did not file a notice of appeal from that dismissal.

¶ 8 In July 2010, this court issued a published opinion in defendant's direct appeal in which we rejected both of her claims and affirmed her conviction. *Staple*, 402 Ill. App. 3d 1098, 932 N.E.2d 1064.

¶ 9 In April 2012, defendant filed the instant successive postconviction petition in which she again argues the trial court erroneously denied her right to hire a private attorney. In May 2012, the trial court summarily dismissed the petition as frivolous and patently without merit because the "exact same issues were argued and decided in the Appellate Court." That

same month, defendant filed a notice of appeal and the court appointed OSAD as counsel on appeal.

¶ 10 In June 2013, OSAD filed a motion to withdraw as appellate counsel, attaching to its motion a brief in conformity with the requirements of *Pennsylvania v. Finley*, 481 U.S. 551 (1987). The record shows service of the motion on defendant. On its own motion, this court granted defendant leave to file additional points and authorities by July 5, 2013. Defendant did not do so. After examining the record and executing our duties in accordance with *Finley*, we grant OSAD's motion and affirm the trial court's judgment.

¶ 11 II. ANALYSIS

¶ 12 OSAD argues defendant's petition presents no meritorious issues. OSAD asserts defendant's argument was rejected (1) by this court in defendant's direct appeal and (2) by the trial court in defendant's first postconviction petition, from which she did not appeal. Accordingly, OSAD contends defendant's claim is barred by *res judicata*. We agree.

¶ 13 In her direct appeal, defendant argued the trial court erred by denying her motion to continue to hire private counsel. We disagreed, finding the court did not abuse its discretion by denying defendant's motion to continue. Defendant moved for a continuance on the morning of trial; she did not allege counsel was ready, willing, and able to represent her; she refused to provide the name of the attorney with whom she had allegedly spoken about representing her; and the court found a continuance would be prejudicial with respect to a defense witness who had been transported from the Department of Corrections to testify. We held "[t]he court was allowed to infer from these facts defendant was using her motion to continue 'to \*\*\* thwart the administration of justice or to otherwise impede the effective prosecution of a crime.'" *Staple*,

402 Ill. App. 3d at 1104, 932 N.E.2d at 1069.

¶ 14 Defendant's claim in the instant postconviction petition is identical to the claim this court rejected on direct appeal and the trial court rejected in defendant's first postconviction petition. The claim is without merit.

¶ 15 III. CONCLUSION

¶ 16 We grant OSAD's motion to withdraw as appellate counsel and affirm the trial court's judgment.

¶ 17 Affirmed.