

No. 1-12-0301

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).

IN THE
APPELLATE COURT OF ILLINOIS
FIRST JUDICIAL DISTRICT

THE PEOPLE OF THE STATE OF ILLINOIS,)	Appeal from the
)	Circuit Court of
Plaintiff-Appellee,)	Cook County.
)	
v.)	No. 84 C 14268
)	
MARKUS HUNTER,)	Honorable
)	Rosemary Grant-Higgins,
Defendant-Appellant.)	Judge Presiding.

JUSTICE McBRIDE delivered the judgment of the court.
Presiding Justice Gordon and Justice Palmer concurred in the judgment.

ORDER

¶ 1 *Held:* The trial court properly denied defendant leave to file a successive postconviction petition where defendant failed to allege cause for his failure to raise the issue of a witness' alleged perjury in his prior postconviction petitions.

¶ 2 Defendant Markus Hunter appeals from an order of the circuit court of Cook County denying him leave to file a successive *pro se* petition (defendant's fifth) for relief under the Post-Conviction Hearing Act (725 ILCS 5/122-1 *et seq.* (West 2010)). This court previously affirmed

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the judgment entered on defendant's 1985 jury convictions for armed robbery, home invasion, and aggravated battery, and sentence of natural life imprisonment under the habitual criminal statute (Ill. Rev. Stat. 1983, ch. 38, ¶ 33B-1, recodified as amended at 720 ILCS 5/33B-1 (West 2010)). *People v. Glover*, 173 Ill. App. 3d 678 (1988). We also affirmed the dismissal of defendant's five subsequent *pro se* petitions for postconviction relief. *People v. Hunter*, Nos. 1-00-4043 and 1-01-3195 (cons.) (2003)¹, 1-09-0198 (2010), 1-12-3192 (2013) (unpublished orders under Supreme Court Rule 23). While defendant's appeal in the current case was pending, we affirmed the dismissal of defendant's sixth postconviction petition. *People v. Hunter*, 2013 IL App (1st) 123192-U.

¶ 3 On appeal, defendant contends that the trial court erred when it denied him leave to file arguing that the State violated *Brady v. Maryland*, 373 U.S. 83 (1963), when it failed to disclose evidence that a key witness for the State had lied under oath regarding her marital status and maiden name. Defendant supported his claim with a funeral bulletin and obituary dated November 18, 1988, which he claims supports the conclusion that the State's witness lied about her maiden name and marital status. Defendant concedes that his motion for leave to file a successive postconviction petition did not allege cause for failure to include this claim in one of his several prior postconviction petitions but argues that "The numerous petitions [defendant] filed from the time of [the witness'] death to the time he filed the instant petition allow the inference that that he was not in possession of the information earlier—or else he would have included the issue in a previous filing." We affirm.

¹ Defendant's second post-conviction petition was treated as an amended version of his first post-conviction petition. This amended petition was considered in a consolidated appeal along with his third post-conviction petition.

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¶ 4 The facts of this case are adequately set forth in the opinion disposing of defendant's direct appeal. See *Glover*, 173 Ill. App. 3d at 680-83. In summary, defendant and four codefendants were convicted of armed robbery, home invasion, and aggravated battery after they allegedly entered an unlicensed club operated by Eddie Morris on the first floor and basement of a building where he resided with his family on the second floor. At trial, Rosalind Morris testified that she was Eddie's wife and that her maiden name was Iaello. She also described the home invasion and robbery. Her testimony was substantially corroborated by Eddie Morris' testimony.

¶ 5 In December 2011, defendant filed the motion for leave to file a successive postconviction petition that is the subject of this appeal. Attached to the motion was defendant's handwritten postconviction petition. The petition is in excess of 280 pages and includes over 200 numbered allegations of error, many with multiple subordinate allegations. Among those allegations, defendant alleged that Rosalind Morris lied under oath when she testified that she was married to Eddie Morris, and that she lied when she testified that her maiden name was Iaello. Defendant further alleged that the State was aware of, and coerced, the perjured testimony. In support of this allegation, defendant attached a funeral bulletin and obituary for Rosalind Christine Lerch. Lerch and Morris shared a first name and birthdate, but there the similarities end. The obituary does not identify Eddie Morris as Lerch's husband and indicates that her parents were Christian and Roasalie Lerch. In defendant's brief, appellate counsel asserts, without citation to the record, that defendant recognized a photograph included in the Lerch funeral bulletin as the same woman who testified against him at trial.

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¶ 6 The trial court denied defendant's motion for leave to file a successive postconviction petition. Defendant timely appeals.

¶ 7 The Post-Conviction Hearing Act (725 ILCS 5/122-1 *et seq.* (West 2010)) creates a system under which a criminal defendant can raise constitutional issues that escaped earlier review. See *People v. Simpson*, 204 Ill. 2d 536, 546 (2001). The Act contemplates the filing of only a single postconviction petition and successive petitions are disfavored. *People v. Edwards*, 2012 IL 111711, ¶ 22. The general bar against successive petitions may be relaxed under two circumstances: (1) when the defendant can establish "cause and prejudice" for the failure to raise the claim earlier; and (2) when the defendant demonstrates a "fundamental miscarriage of justice." *Id.* at ¶¶ 22-23, citing *People v. Pitsonbarger*, 205 Ill. 2d 444, 459 (2002). The legislature codified the cause and prejudice test in section 122-1(f) of the Act (725 ILCS 5/122-1(f) (West 2010)) several years after *Pitsonbarger* was decided.

¶ 8 Under the cause and prejudice test, the bar to successive postconviction petitions is relaxed when the defendant can show cause for failing to raise the claim in his initial postconviction petition and prejudice resulting from the failure. *People v. Jones*, 2013 IL App (1st) 113263, ¶ 12. To show cause, "defendant must demonstrate that 'some objective factor external to the defense impeded his ability to raise the claim in the initial post-conviction proceeding.'" *Id.*, quoting *People v. Tenner*, 206 Ill. 2d 381, 393 (2002). To show prejudice, "defendant must demonstrate that the claimed error so infected his trial that the resulting conviction violated due process." *Id.* When evaluating a trial court's decision to deny leave to file a successive petition we apply *de novo* review. See *People v. Wrice*, 406 Ill. App. 3d 43, 51 (2010).

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¶ 9 The parties disagree about the substantive standard that applies to defendant's pleading. Defendant argues that we should follow *People v LaPointe*, 365 Ill. App. 3d 914, 924 (2006), and require defendant to do no more than present the "gist" of a meritorious claim of cause and prejudice. The State on the other hand cites *Edwards*, and argues that a more exacting standard should apply. Our supreme court has recognized the importance of this issue but has not ruled on it. See *People v. Evans*, 2013 IL 113471, ¶¶ 11-12. We find that we likewise need not decide this issue because defendant's claim fails under either standard. *Id.*

¶ 10 Here, defendant has quite simply failed to allege any cause whatsoever for his failure to raise the issue of Rosalind's alleged perjury in one of the multiple postconviction petitions he filed in the 23 years following her death. On appeal, counsel asserts that "The numerous petitions [defendant] filed from the time of Rosalind's death to the time he filed the instant petition allow the inference that he was not in possession of the information earlier—or else he would have included the issue in a previous filing." The only inference we will draw from this statement is that counsel has been unable, as we have been likewise unable, to find any allegation of fact in the hundreds of pages filed by defendant that would arguably constitute cause for his failure to raise his claim earlier. We must reject counsel's suggestion that we can infer cause from the failure to raise the issue. Doing so would make a mockery of the legislative purpose behind section 122-1(f). If cause could be inferred from nothing more than the failure to raise an issue sooner, there would be no need for any successive petitioner to ever allege cause, and the requirement of section 122-1(f) that a "petitioner demonstrate[] cause" would improperly be rendered a nullity. See *People v. Liberman*, 228 Ill. App. 3d 639, 647 (1992) ("It is fundamental that statutes are to be construed so that no word, clause or sentence is rendered meaningless or

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superfluous.") Accordingly, we find that defendant has failed to allege cause and the trial court did not err when it denied him leave to file his successive postconviction petition.

¶ 11 For the foregoing reasons, we affirm the judgment of the circuit court of Cook County.

¶ 12 Affirmed.