

No. 1-12-1163

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.)	Nos. 04 CR 7326-30
)	
NOLAN WATSON,)	The Honorable
)	Charles P. Burns,
Defendant-Appellant.)	Judge Presiding.

JUSTICE FITZGERALD SMITH delivered the judgment of the court.
Justices Lavin and Epstein concurred in the judgment.

ORDER

¶ 1 *Held:* Order denying defendant leave to file successive petition for post-conviction relief affirmed over defendant's contention that the court committed procedural error by denying leave without ruling on his separate motion for leave.

¶ 2 Defendant Nolan Watson 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 (725 ILCS 5/122-1 *et seq.* (West 2012)). He contends that this order must be vacated and the matter remanded for further proceedings based on the court's procedural error of

denying him leave to file a successive petition without ruling on his separate motion requesting such leave.

¶ 3 The record shows that defendant is serving an aggregate term of 40 years' imprisonment that was imposed on his 2006 jury convictions of two counts of aggravated criminal sexual assault of a minor. On the same day, defendant pleaded guilty in four additional cases involving sexual offenses against four other minors and was sentenced to terms of imprisonment to run concurrent with each other and with the sentence imposed on his jury convictions. This court affirmed defendant's jury convictions on direct appeal. *People v. Watson*, 2011 IL App (1st) 080315-U.

¶ 4 While his appeal was pending, defendant filed a *pro se* post-conviction petition in June 2009, in which he addressed his jury convictions and the four other cases to which he pleaded guilty. Defendant alleged numerous instances of ineffective assistance of counsel, and the failure of the trial court to properly admonish him before accepting his guilty plea, at sentencing and afterwards. The circuit court summarily dismissed defendant's petition as frivolous and patently without merit. We affirmed that decision on appeal. *People v. Watson*, 2012 IL App (1st) 092249-U.

¶ 5 In October 2011, defendant filed the instant *pro se* successive post-conviction petition alleging that he was charged for offenses that took place beyond the statute of limitations, that the indictments were fatally defective, and that the State presented false evidence against him. He further alleged ineffective assistance of trial and appellate counsel, error by the State in misleading the grand jury and withholding exculpatory evidence from them, and improper instruction of the jury regarding inconsistent statements. He maintained that this court failed to

review his *pro se* motion on direct appeal because it was viewed as improper hybrid representation, and that appellate counsel was ineffective for failing to properly raise the issues defendant set forth in his *pro se* motion.

¶ 6 Defendant also filed a separate motion for leave to file a successive post-conviction petition in which he alleged that he demonstrated cause for failing to raise the issues in his initial petition based on trial counsel's ineffectiveness in abandoning his appeal, and that he had to utilize his first post-conviction petition to regain his lost right to appeal. He also claimed that he only became aware that his counsel abandoned his appeal after filing a complaint against him, and that the abandonment affected his ability to present ineffective assistance of appellate counsel claims in his initial post-conviction petition. Defendant further alleged that he was prejudiced where the claims he raised so infected his convictions and sentences that his rights to due process and fundamental fairness were violated. Defendant also repeated many of the allegations in his initial post-conviction petition, alleging that the issues were not addressed by the court during summary dismissal or on appeal of that dismissal.

¶ 7 The circuit court entered a written order denying defendant leave to file a successive post-conviction petition. In this order, the court found that defendant failed to identify any objective factor which impeded his efforts to raise the claims earlier, or prejudice resulting from the failure to assert the claims earlier. The court noted that defendant did not allege facts underlying his claims which were withheld from him or that his claims were based on newly discovered evidence, and that defendant thus failed to satisfy the cause and prejudice test. The court also noted that defendant titled his petition as a successive petition, but that "he does not request leave of court to file a successive petition."

¶ 8 On appeal, defendant solely contends that the circuit court committed procedural error by denying him leave to file a successive petition without ruling on his separate motion for leave to do so. He maintains that it was premature for the circuit court to deny him leave to file a successive petition before it even reviewed the motion seeking that leave. Defendant has raised no substantive issues regarding the allegations in his petition, including whether he satisfied the cause and prejudice test, and, thus, has waived those issues for review. *People v. Pendleton*, 223 Ill. 2d 458, 476 (2006).

¶ 9 The Act contemplates the filing of only one post-conviction petition (*People v. Erickson*, 183 Ill. 2d 213, 222 (1989)); however, leave of court may be granted to file a successive post-conviction petition where defendant demonstrates cause for failing to raise the claim in his earlier petition and prejudice resulting from that failure. 725 ILCS 5/122-1(f) (West 2012). Defendant has the burden to obtain leave of court before the successive petition may be filed, and it is incumbent upon him, by whatever means, to prompt the circuit court to consider whether leave should be granted and to obtain a ruling on whether he has demonstrated cause and prejudice. *People v. Tidwell*, 236 Ill. 2d 150, 157 (2010). No separate motion seeking leave is mandated under section 122-1(f) of the Act, nor is an explicit request required if the circuit court sees fit to consider the matter and rules on its own accord *sua sponte*. *Tidwell*, 236 Ill. 2d at 157, 161. That order, in turn, is reviewable on appeal. *Tidwell*, 236 Ill. 2d at 162.

¶ 10 Here, the record shows that defendant filed a separate motion for leave to file a successive post-conviction petition in which he essentially repeated the allegations in the successive post-conviction petition which accompanied the motion, and attempted to explain his inability to raise his ineffective assistance claims in his initial post-conviction petition. Although

the circuit court stated that defendant did not request leave to file a successive petition, the court addressed the allegations in his petition under the cause and prejudice test, and denied defendant leave after finding that he failed to satisfy that test. In doing so, the court essentially complied with the procedures set forth in the Act for successive petitions. 725 ILCS 5/122-1(f) (West 2012). Under these circumstances, we find the court's error harmless (see *e.g. People v. Simmons*, 388 Ill. App. 3d 599, 613 (2000), citing *People v. Rivera*, 198 Ill. 2d 364, 374-75 (2001) (partial summary dismissal of post-conviction petition subject to harmless error analysis); see also *People v. Luczak*, 374 Ill. App. 3d 172, 180, 184 (2007) (any procedural error in summary dismissal of defendant's motion seeking DNA testing harmless error)), and no cause for remand.

¶ 11 In reaching that conclusion, we observe that defendant has not explained how the court's error resulted in any prejudice to him, and merely asserts that the error rendered the court's order void, automatically requiring that the order be vacated and the matter remand for further proceedings under the Act. In support of his argument, defendant cites *People v. Quigley*, 365 Ill. App. 3d 617, 620 (2006), in which the court held that procedural errors at the summary dismissal stage of an initial post-conviction petition are void and cannot be affirmed on other grounds. *Quigley* is distinguishable as we do not have before us an initial petition at the summary dismissal stage, but, rather, a successive petition which is reviewed under the cause and prejudice test. Moreover, and as noted previously, the court considered whether leave should be granted and ruled on whether defendant had shown cause and prejudice, thus following the procedures of the Act in denying defendant leave to file a successive post-conviction petition. 725 ILCS 5/122-1(f) (West 2012).

¶ 12 Defendant, nonetheless, maintains that the court's error is analogous to an improper *sua sponte* dismissal of a petition for post-judgment relief under section 2-1401 the Code of Civil Procedure (735 ILCS 5/2-1401 (West 2012)) before the expiration of the 30-day period during which the State may respond. He maintains that pursuant to *People v. Laugharn*, 233 Ill. 2d 318, 323-24 (2009), the court's error requires that its order be vacated without regard to the merits of the arguments raised in his petition.

¶ 13 We observe that the time requirements for a section 2-1401 petition are statutorily mandated in accordance with supreme court rules (*Laugharn*, 233 Ill. 2d at 323-24), and that there is no comparable requirement for successive post-conviction petitions (*People v. LaPointe*, 227 Ill. 2d 39, 44 (2007)). The plain language of section 122-1(f) of the Act prohibits the filing of such a petition until leave is granted by the court (*LaPointe*, 227 Ill. 2d at 44), and, as pertinent here, where defendant satisfies the cause and prejudice test. 725 ILCS 5/122-1(f) (West 2012). The court here considered defendant's successive petition in terms of the cause and prejudice test (*Tidwell*, 236 Ill. 2d at 161), and found that it did not meet that test and denied leave to file the petition. *Laugharn* does not call for a contrary result.

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

¶ 15 Affirmed.