

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).

2014 IL App (3d) 120789-U

Order filed September 22, 2014

IN THE
APPELLATE COURT OF ILLINOIS
THIRD DISTRICT

A.D., 2014

THE PEOPLE OF THE STATE OF ILLINOIS,)	Appeal from the Circuit Court of the 14th Judicial Circuit, Rock Island County, Illinois.
Plaintiff-Appellee,)	
v.)	Appeal No. 3-12-0789
)	Circuit No. 03-CF-821
STEVEN D. LISLE, Jr.,)	Honorable
Defendant-Appellant.)	Walter D. Braud, Judge, Presiding.

JUSTICE HOLDRIDGE delivered the judgment of the court.
Justice O'Brien concurred in the judgment.
Justice Schmidt dissented from the judgment.

ORDER

- ¶ 1 *Held:* The cause is remanded for a ruling on the defendant's motion for substitution of judge and further proceedings pending the resolution of the motion.
- ¶ 2 The defendant, Steven D. Lisle, Jr., appeals from the denial of his motion for leave to file a successive postconviction petition. On appeal, the defendant argues that the trial court erroneously denied his motion without considering his simultaneously filed motion for substitution of judge. We vacate and remand for further proceedings.

¶ 3

FACTS

¶ 4 After a jury trial, the defendant was found guilty of first degree murder (720 ILCS 5/9-1(a)(2) (West 2002)) and aggravated battery with a firearm (720 ILCS 5/12-4.2(a)(1) (West 2002)). The trial court sentenced the defendant to a total of 37 years' imprisonment.

¶ 5 On March 29, 2012, the defendant filed a motion for leave to file a successive postconviction petition. On the same date, the defendant filed a motion for substitution of judge. The latter motion alleged that the defendant had filed a complaint against the trial judge with the Judicial Inquiry Board. The defendant argued that as a result of the complaint, the trial judge would be prejudiced.

¶ 6 On April 26, 2012, the court denied the defendant's motion for leave to file a successive postconviction petition. On May 14, 2012, the defendant filed a motion to reconsider the denial order and a motion for substitution of the judge. The defendant argued that a conflict of interest existed because the trial judge was a character witness for State's Attorney Jeff Terronez, and the defendant's motion for leave included a claim of prosecutorial misconduct against Terronez. The trial court denied the defendant's motion to reconsider without ruling on the second motion for substitution of judge. The defendant appeals.

¶ 7

ANALYSIS

¶ 8 The defendant argues that the trial court erred in denying his motion for leave to file a successive postconviction petition because the court never ruled on his contemporaneously filed motion for substitution of judge. The State responds that the defendant has procedurally defaulted this issue because the defendant did not seek a ruling on the motion.

¶ 9 Generally, a party filing a motion has the responsibility to bring the motion to the trial court's attention. *People v. Kelley*, 237 Ill. App. 3d 829 (1992). "[W]hen no ruling has been

made on a motion, the motion is presumed to have been abandoned absent circumstances indicating otherwise." *People v. Van Hee*, 305 Ill. App. 3d 333, 335 (1999).

¶ 10 Here, the defendant filed a *pro se* motion for substitution of judge with his motion for leave to file a successive postconviction petition. The trial court never ruled on the motion, but the defendant persisted in his request for a substitution of judge by filing a new motion with his motion to reconsider. The trial court also did not rule on the second motion. The defendant's imprisonment limited his means to seek a further ruling. As a result of the defendant's repeated motions for substitution, we do not find that the defendant procedurally defaulted this issue.

¶ 11 Turning to the merits, we note that in a postconviction proceeding, there is no automatic right to a substitution of judge. *People v. Brim*, 241 Ill. App. 3d 245 (1993). The judge who presided over the criminal trial should hear the postconviction petition unless the defendant "proffers facts to show that judge would be prejudiced." *Id.* at 248. If a motion for substitution of judge is improperly denied, all subsequent action taken by the trial judge is void. *People v. Banks*, 213 Ill. App. 3d 205 (1991).

¶ 12 In the instant case, the defendant argued that the trial judge was prejudiced because (1) the defendant had filed a complaint with the Judicial Inquiry Board and (2) the judge had a conflict of interest. Although we express no opinion as to the merits of the defendant's arguments, we find that they warrant review and a ruling before the trial court may proceed to review the defendant's motion for leave. As a result, we vacate the trial court's denial of the motion for leave to file a successive postconviction petition and remand the cause to the trial court with instruction to review and rule on the defendant's motions for substitution of judge before proceeding to further postconviction proceedings.

¶ 13 CONCLUSION

¶ 14 The judgment of the circuit court of Rock Island County is vacated, and the cause is remanded for further proceedings.

¶ 15 Vacated and remanded with directions.

¶ 16 JUSTICE SCHMIDT, dissenting.

¶ 17 The majority concludes that the trial court erred when denying defendant's motion for leave to file a successive postconviction petition, claiming the trial court was required to first rule on one of the two motions filed by defendant seeking a substitution of judge. *Supra* ¶ 12. I disagree and, therefore, dissent.

¶ 18 Initially, I question our jurisdiction to review issues associated with defendant's motions to substitute judge, as defendant failed to secure a ruling on those motions. Simply put, we have nothing to review on those matters.

¶ 19 A "party's failure to obtain a ruling from the trial court on its motion results in an abandonment of the motion and create[s] a procedural default of any issue related to that motion for the purpose[s]of appeal." (Internal quotation marks omitted.) *Mohica v. Cvejic*, 2013 IL App (1st) 111695, ¶ 85 (quoting *Rodriguez v. Illinois Prisoner Review Board*, 376 Ill. App. 3d 429, 433 (2007)); see also *People v. Hornaday*, 400 Ill. 361 (1948). In *People v. Johnson*, 159 Ill. 2d 97 (1994), our supreme court clearly stated that the "[d]efendant abandoned his motion [to substitute judge] by failing to pursue it within a reasonable time after he filed it." *Id.* at 123.

¶ 20 The majority herein dismisses the principle of abandonment given defendant's status as a *pro se* litigant and due to his imprisonment, claiming it "limited his means to seek a further ruling." *Supra* ¶ 10. Neither reason is sufficient to allow this court to review the matter. Our supreme court has also clearly stated, "*Pro se* litigants are presumed to have full knowledge of applicable court rules and procedures, including procedural deadlines with respect to filing

motions." *Steinbrecher v. Steinbrecher*, 197 Ill. 2d 514, 528 (2001). "A *pro se* defendant must comply with rules of procedure required of those represented by counsel and a court should not apply more lenient standards to *pro se* clients." *People v. DeRossett*, 237 Ill. App. 3d 315, 339 (1992).

¶ 21 Had defendant herein been represented by counsel who filed two motions and failed to obtain a ruling on either motion, we would undoubtedly refuse to consider arguments concerning those motions based on forfeiture. The fact that defendant proceeded *pro se* does not excuse that forfeiture. *Steinbrecher*, 197 Ill. 2d at 528. Moreover, incarceration simply does not excuse a party from adhering to the strictures of court rules and procedures. *People v. McClain*, 292 Ill. App. 3d 185, 189 (1997); *People v. Mitchell*, 296 Ill. App. 3d 930 (1998). As this court noted in *Mitchell*, "a prison lockdown, restricting an inmate's access to the prison law library, does not constitute a legitimate excuse for the inmate's not filing a postconviction petition in a timely fashion." (Internal quotation marks omitted.) *Id.* at 933 (quoting *People v. McClain*, 292 Ill. App. 3d at 190)).

¶ 22 The defendant herein has forfeited any arguments regarding his motions to substitute judge by failing to obtain a ruling on those motions. Moreover, even were the arguments properly before this court, I would find them lacking. Defendant's motions to substitute judge fail to allege facts sufficient to require the recusal of Judge Braud prior to Judge Braud's original ruling on the motion for leave to file a successive petition. As such, I disagree with the majority's conclusion that defendant's motions "warrant review and a ruling before the trial court may proceed to review the defendant's motion for leave." *Supra* ¶ 12.

¶ 23 Defendant's original motion for substitution of judge, filed with his motion for leave to file a successive postconviction petition, alleges: (1) defendant has "a pending claim against

judge Walter D. Braud pending in the 3rd judicial circuit appellate court for failing to disqualify himself"; (2) defendant "has a pending claim against Judge Walter D. Braud pending in the Judicial Inquiry Board"; and (3) "due to the pending claims against Walter D. Braud that he would be prejudiced if Mr. Braud resides over his petition for leave." Defendant's second motion for substitution of judge claims that a conflict of interest on behalf of Judge Braud, alleging defendant "filed a claim of prosecutor misconduct against" the State's Attorney and that Judge Braud may be called as a character witness in that matter.

¶ 24 In *People v. Harvey*, 379 Ill. App. 3d 518 (2008), the defendant "asserted that the dismissal of his postconviction petition *** was a void judgment because the court did not properly dispose of his contemporaneous motion for substitution of judge, in contravention of section 114-5(d)." *Id.* at 519. The *Harvey* court stated that "defendant failed to recognize that the statute does not apply in postconviction proceedings." *Id.* at 522. "Therefore, defendant has no absolute right to a substitution of judge in a postconviction proceeding." *Id.*

¶ 25 The *Harvey* court went on to define the "certain limited circumstances where *** a judge must recuse himself from postconviction proceedings." *Id.* These situations include, "where judge has knowledge outside the record concerning the truth or falsity of allegations made and where judge may be called as a material witness ***, where judge has a direct, personal, and substantial pecuniary interest in a criminal case *** [or] where judge exhibits personal bias or prejudice toward a party or party's lawyer." *Id.*

¶ 26 Defendant's motions make no allegations that Judge Braud: (1) had any knowledge outside the record; (2) had any direct or personal pecuniary interest in the criminal case; or (3) exhibited personal bias or prejudice toward defendant or defendant's lawyer.

¶ 27 Finally, when "a judge is faced with a successive post-conviction petition alleging a possible conflict of interest, the judge need not recuse himself from considering the successive petition unless the petition, on its face, demonstrates that the claims can be properly raised in a successive post-conviction petition. Just as the rule in *Johnson* is designed to ensure that motions for substitution are not frivolously made [citation], the requirement of a *prima facie* showing that the successive petition is proper ensures that a defendant is not able to obtain a substitution of judge on an otherwise improper successive petition simply by including allegations of a conflict of interest. Further, if the successor petition is not facially proper, the trial court will not consider the substantive merits of the underlying allegations and therefore the question posing the potential conflict of interest will never be reached." *People v. Wright*, 189 Ill. 2d 1, 18 (2000), overruled on *other grounds* by *People v. Boclair*, 202 Ill. 2d 89, 98 (2002) (Specifically, *Boclair* overruled the portion of *Wright*, which held that a trial court could summarily dismiss a postconviction petition during the initial stage based on untimeliness. "We hold that the Act does not authorize the dismissal of a post-conviction petition during the initial stage based on untimeliness. To the extent that our opinion in *Wright* may be read as holding the contrary to be true, we now expressly overturn that portion of the *Wright* decision.") *People v. Boclair*, 202 Ill. 2d at 99.

¶ 28 Defendant's inclusion of a motion to substitute judge with the filing of his motion for leave to file a successive postconviction petition did not preclude the trial court from considering the merits of his motion for leave. The majority order herein runs afoul of *Wright* by remanding for consideration of the motion to substitute without first considering the merits of the trial court's dismissal of the motion for leave to file a successive petition.

¶ 29 Despite the State's citation to and discussion of *Wright* in its brief and argument to this court, defendant makes no attempt to differentiate *Wright* in his reply brief. During its discussion of *Wright*, the State specifically and correctly argues that "a trial judge need not recuse himself from considering the substance of the successive petition's allegations unless the petition, on its face, demonstrates that the claims can be properly raised in a successive post-conviction petition." Nowhere, in defendant's arguments to this court, can I find the assertion that his motion for leave to file a successive postconviction petition was improperly denied because his claims can, in fact, properly be raised in a successive petition. I find the trial court properly considered the merits of defendant's motion for leave to file a successive postconviction petition. Defendant has made no arguments to this court that the trial court improperly denied his motion for leave based on the substance or the merit of either the motion or the proposed successive petition.

¶ 30 I would affirm the judgment of the trial court, and, therefore, respectfully dissent.