

NOTICE
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2014 IL App (5th) 120373-U

NO. 5-12-0373

IN THE

APPELLATE COURT OF ILLINOIS

FIFTH DISTRICT

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).

THE PEOPLE OF THE STATE OF ILLINOIS,)	Appeal from the
)	Circuit Court of
Plaintiff-Appellee,)	St. Clair County.
)	
v.)	No. 96-CF-157
)	
JESSIE COLEMAN,)	Honorable
)	Stephen P. McGlynn,
Defendant-Appellant.)	Judge, presiding.

JUSTICE STEWART delivered the judgment of the court.
Justices Goldenhersh and Chapman concurred in the judgment.

ORDER

¶ 1 *Held:* The defendant's combined petition for relief from judgment and for postconviction relief was properly dismissed by the circuit court where the defendant's attorney was not disbarred until after his representation of the defendant, and the defendant did not allege a single instance of deficient representation.

¶ 2 The defendant, Jessie Coleman, appeals the circuit court's dismissal of his petition for relief from judgment and his petition for postconviction relief. The State Appellate Defender has been appointed to represent him. The State Appellate Defender has filed a motion to withdraw as counsel, alleging that there is no merit to the appeal. See *Pennsylvania v. Finley*, 481 U.S. 551 (1987); *People v. McKenney*, 255 Ill. App. 3d 644

(1994). The defendant was given proper notice and an extension of time to file briefs, memoranda, or other documents demonstrating why the judgment should not be affirmed and why counsel should not be permitted to withdraw. The defendant has not done so. Upon examination of the entire record and the motion of the State Appellate Defender, we find no error or potential grounds for appeal. Therefore, we now grant the motion of the State Appellate Defender to withdraw as counsel and affirm the judgment of the circuit court of St. Clair County based on the following.

¶ 3

BACKGROUND

¶ 4 On June 17, 1998, the defendant, Jessie Coleman, was convicted by a jury of first-degree murder in the death of a three-year-old girl. On July 17, 1998, the defendant filed a motion for a new trial, which was denied. On July 31, 1998, the defendant's trial attorney, Joseph Bassy, was charged in federal court with two counts of forgery in connection with the representation of other clients. On August 17, 1998, the Illinois Attorney Registration and Disciplinary Commission (ARDC) filed a statement of charges against Mr. Bassy in the Illinois Supreme Court, in which it pointed out that Mr. Bassy had signed a motion that his name be stricken from the Master Roll of Attorneys, along with laying out several allegations of misconduct, to some of which Mr. Bassy had admitted guilt.

¶ 5 On September 23, 1998, John Turner filed a motion, on behalf of the defendant, to continue the sentencing hearing. In the motion, Mr. Turner provided that Mr. Bassy had been discharged from his position with John Turner and Associates and that as of October 1, 1998, Mr. Bassy would no longer be licensed to practice law. The hearing was

continued another seven times, until a sentencing hearing was held on May 21, 1999, at which point the defendant was represented by Mr. Turner and was sentenced to natural life imprisonment. On direct appeal this court vacated and remanded the cause for a new sentencing hearing (*People v. Coleman*, No. 5-99-0409 (2000) (unpublished order under Supreme Court Rule 23)). On remand, the defendant was sentenced to 60 years' imprisonment. This court affirmed. *People v. Coleman*, No. 5-03-0527 (2004) (unpublished order under Supreme Court Rule 23).

¶ 6 On June 23, 2006, the defendant filed what he labeled a "successive" postconviction petition, although the record does not reveal the filing of a prior postconviction petition. The court dismissed the petition, and we affirmed. *People v. Coleman*, No. 5-06-0466 (2007) (unpublished order under Supreme Court Rule 23).

¶ 7 On May 29, 2012, the defendant filed a combined petition for relief from judgment, pursuant to section 2-1401 of the Code of Civil Procedure (735 ILCS 5/2-1401 (West 2010)), and for postconviction relief, pursuant to section 122-1 of the Post-Conviction Hearing Act (725 ILCS 5/122-1 (West 2010)), in which he claimed that his conviction was void where "counsel for the defense was either an impostor; not licensed to practice law; under investigation or an agent working on behalf of the prosecution." The defendant's petition did not state Mr. Bassy's actual date of disbarment. Additionally, it did not allege any specific instance of ineffectiveness on the part of Mr. Bassy. On July 18, 2012, the court dismissed the defendant's combined petition. The defendant now appeals that dismissal.

¶ 9 "As a general rule, a petition for relief from judgment under section 2-1401 must be filed within two years after entry of the judgment being challenged." *People v. Harvey*, 196 Ill. 2d 444, 447 (2001) (citing 735 ILCS 5/2-1401(c) (West 1998)). "A *** petition filed beyond the two-year period will not normally be considered." *Id.* (citing *People v. Caballero*, 179 Ill. 2d 205, 210 (1997)). However, an exception lies "where a clear showing has been made that the person seeking relief is under legal disability or duress or the grounds for relief are fraudulently concealed." *Id.* (citing *People v. Caballero*, 179 Ill. 2d 205, 210-11 (1997)). Additionally, "[a] person may also seek relief beyond [the] two-year limitations period where the judgment being challenged is void." *Id.* (citing *R.W. Sawant & Co. v. Allied Programs Corp.*, 111 Ill. 2d 304, 309-10 (1986)).

¶ 10 First, we note that the State Appellate Defender's supporting memorandum provides that Mr. Bassy was disbarred on August 17, 1998. However, the date to which the State Appellate Defender cites is actually the date upon which the ARDC filed its statement of charges against Mr. Bassy. We cannot find support for this date also being the date of Mr. Bassy's disbarment in the record. On the other hand, Mr. Turner indicated to the circuit court that Mr. Bassy would be disbarred as of October 1, 1998. We cannot find another instance in the record that supports this date, nor can we find anything in the record that contradicts it. This court "may take judicial notice of matters not previously presented to the trial court when the matters are capable of instant and unquestionable demonstration." (Internal quotation marks omitted.) *Dawdy v. Union Pacific R.R. Co.*, 207 Ill. 2d 167, 177 (2003). Based on the gravity of the defendant's accusation and in the

interest of justice, we choose to *sua sponte* take judicial notice of the fact that Mr. Bassy was disbarred by consent as of September 28, 1998. Attorney Registration & Disciplinary Commission of the Supreme Court of Illinois (ARDC), retrieved February 10, 2014, at <https://www.iardc.org/ldetail.asp?id=233265680>.

¶ 11 In *People v. Williams*, 93 Ill. 2d 309, 324 (1982), the defendant alleged "numerous instances" of ineffectiveness on the part of his trial counsel. Originally, the court examined the defendant's allegations under the plain error doctrine, but found that, while there may have been errors in judgment, "such errors d[id] not establish incompetency." *Id.* at 324-25. However, after becoming aware that, at the time of the defendant's trial, counsel faced a pending disciplinary hearing which ultimately resulted in his disbarment subsequent to the defendant's trial, the court found that based on these "unique circumstances," it could "no longer characterize counsel's [errors] *** as professional misjudgments made with full knowledge of the applicable law and the facts." *Id.* at 314, 325. The court determined that while there was sufficient evidence to convict the defendant, "the unique circumstances and sequence of events in th[e] capital case, which [would] rarely, if ever, be duplicated," led the court to "forgo application of *** the established tests, normally applied in determining whether a defendant has been deprived of his constitutional right to the assistance of counsel" and to grant the defendant a new trial. *Id.* at 325-26.

¶ 12 In *People v. Szabo*, 144 Ill. 2d 525, 529 (1991), the defendant cited *Williams* in support of his position that he should be granted a new trial based on the disciplinary problems his attorney faced at the time of trial. However, the court found that "*Williams*

was an aberration peculiar to the facts of that case," and the court declined to follow it. *Id.* The court distinguished its case from that of *Williams*, noting that while the defendant in *Williams* "offered 'numerous instances of inaction by counsel to demonstrate that he was denied the effective assistance of counsel' " (*id.* (quoting *People v. Williams*, 93 Ill. 2d 309, 324 (1982))), the defendant in its case offered only "vague allegations" that did "not compare favorably with the extensive list" presented in *Williams*. *Id.* at 529-30. The court applied the test set forth in *Strickland v. Washington*, 466 U.S. 668 (1984). *Id.* at 530-31.

¶ 13 As the State Appellate Defender points out, if Mr. Bassy had been disbarred during the time he represented the defendant, the defendant's conviction would be void. See *People v. Dunson*, 316 Ill. App. 3d 760, 764 (2000) ("The well-settled rule in Illinois is that, where one not licensed to practice law has instituted legal proceedings on behalf of another in a court of record, such action should be dismissed, and if the action has proceeded to judgment, the judgment is void and will be reversed."). If the defendant's conviction were void, then he would not be subject to the two-year limitations period for filing a petition for relief from judgment. However, we cannot find any indication in the record that Mr. Bassy participated in the representation of the defendant, subsequent to July 17, 1998, the date upon which Mr. Bassy filed a motion for a new trial. Therefore, the case *sub judice* is, as was the case in *Szabo*, governed by the standard set forth in *Strickland*.

¶ 14 In order to succeed on a claim of ineffective assistance of counsel under *Strickland*, the defendant must demonstrate (1) "that counsel's representation fell below

an objective standard of reasonableness" and (2) "that there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different." *Szabo*, 144 Ill. 2d at 530-31 (citing *Strickland v. Washington*, 466 U.S. 668, 690 (1984)). The defendant cannot satisfy the first prong of the test as he has not offered a single instance of deficient representation, but rather, has simply pointed to the fact that his attorney, at the time of trial, was "either an impostor," "not licensed to practice law," or "under investigation or an agent working on behalf of the prosecution." We note that even if we had not taken judicial notice of Mr. Bassy's date of disbarment, we would still apply *Strickland* and reach the same conclusion as the only date of disbarment provided by the record is subsequent to any filing by Mr. Bassy or any participation by him in this case. Additionally, as previously noted, the defendant did not provide a date of disbarment in his combined petition. We also note that Mr. Turner was granted repeated continuances in order to prepare to represent the defendant at sentencing. Furthermore, our review of the record reveals that, despite Mr. Bassy's other improprieties, he aggressively represented the defendant at trial.

¶ 15 We further find that the defendant's filing, taken as a petition for postconviction relief, meets a similar unsuccessful outcome. Because Mr. Bassy was licensed at the time he represented the defendant, and the defendant has not alleged a single instance of deficient representation or supported the contention that Mr. Bassy may have actually been an impostor or working for the State, he has not presented the gist of a constitutional claim. See *People v. Johnson*, 377 Ill. App. 3d 854, 858 (2007) ("In order to survive a

dismissal at this stage, a *pro se* postconviction petition *** [must] assert the gist of a constitutional claim.").

¶ 16

CONCLUSION

¶ 17 The motion of the State Appellate Defender to withdraw is granted, and the judgment of the circuit court is affirmed.

¶ 18 Motion granted; judgment affirmed.