2015 IL App (1st) 13-1467

FOURTH DIVISION
August 27, 2015

No. 1-13-1467

IN THE

APPELLATE COURT OF ILLINOIS

FIRST DISTRICT

PEOPLE OF THE STATE OF ILLINOIS,	)	
	)	Appeal from the Circuit Court
Respondent-Appellee,	)	of Cook County, Illinois,
	)	County Department, Criminal
v.	)	Division
	)	
JESSE HATCH,	)	No. 80 C 5534
	)	
Petitioner-Appellant.	)	The Honorable
	)	Dennis J. Porter,
	)	Judge Presiding.

PRESIDING JUSTICE FITZGERALD SMITH delivered the judgment of the court.

Justices Ellis and Cobbs concurred in the judgment.

ORDER

¶ 1 *Held*: The circuit court erred in denying the petitioner's motion for leave to file his successive postconviction petition. Pursuant to *People v. Wrice*, 2012 IL 111860, the petitioner established both cause and prejudice, wherein his allegedly physically coerced statements to police were used as substantive evidence of his guilt at trial. Because the petitioner's pleading was not frivolous, the trial court erred in imposing filing fees and costs as well as instructing the clerk of the circuit court not to accept any future filings by the petitioner.

¶ 2 The petitioner, Jesse Hatch, appeals from the trial court's denial of his motion for leave to file

a successive postconviction petition pursuant to section 122-1(f) of the Illinois Post-Conviction Hearing Act (Act) (725 ILCS 5/122-1(f) (West 2010)). Citing to the Illinois Supreme Court's decision in *People v. Wrice*, 2012 IL 111860, he contends that the trial court erred when it found that he failed to establish the requisite prejudice which would permit him to proceed with his successive petition. In addition, the petitioner asserts that the trial court erred in imposing frivolous filing fees pursuant to section 22-105 of the Illinois Code of Civil Procedure (Code) (735 ILCS 5/22-105 (West 2010)). Finally, the petitioner argues that the court exceeded its authority when it barred the Cook County circuit court from accepting any future filings by the petitioner, as this action is expressly prohibited by section 22-105(a) of the Code735 ILCS 5/22-105(a) (West 2010)). For the reasons that follow, we reverse and remand.

¶ 3 I. BACKGROUND

¶ 4 The record reveals the following facts and procedural history. The petitioner was charged with first degree murder and armed robbery following a shooting that occurred on the night of August 4, 1980, in a garage in the Area 2 police district in Chicago. The victim, Robert Magoon, subsequently died from multiple gunshot wounds.

¶ 5 Before trial began, the petitioner filed a motion to suppress an oral statement he made to police following his arrest. The petitioner alleged that he had been physically and mentally coerced by Area 2 police into making an inculpatory statement regarding the victim's murder. In a subsequent affidavit and amended motion, the petitioner claimed that he was struck repeatedly in the head, kicked in the stomach and groin, threatened with guns and hit with a telephone book by police. He alleged that five to seven police officers were in the room when he was beaten; he described the officer who kicked him in the groin as 5'8" tall, of medium build and having sandy

hair, and two other officers who beat him as 5'9" tall, of medium build and having brown hair and 5'8" tall and weighing 210 to 230 pounds, respectively.

¶ 6 At a hearing on the petitioner's pretrial motion, officer Jeffery Johnson, Detectives Frank Glynn, Gerald Corless and Peter Dignan, and Assistant State's Attorney (ASA) Patrick Calihan testified. Officer Johnson stated that he arrested the petitioner at 5 p.m. on the day after the murder and advised him of his *Miranda* rights. After the petitioner stated that he understood these, officer Johnson transported him, along with his companion Marilyn Green, to Area 4 police station. After about 45 minutes, they were transported to Area 2 and placed in separate interrogation rooms on the second floor. Officer Johnson testified that from about 6:30 p.m. when they arrived at Area 2, to about 8:30 p.m., he was in a room next to where the petitioner was kept. The officer averred that he neither abused the petitioner nor saw any other police officer do so. Detective Glynn testified that he received the petitioner from officer Johnson and placed him in an interview room where the petitioner was handcuffed to a ring on the wall. At 7:30 p.m., detective Glynn, along with detective Corless, entered the interview room and advised the petitioner of his rights, whereupon the petitioner stated he understood them and began having a conversation with the detectives which lasted until 8 p.m. and resulted in an oral statement. Detective Glynn testified that he did not abuse the petitioner nor saw any other police officer do so. Detective Corless stated that when he first spoke to the petitioner in the interview room, he advised him of his rights. Once the petitioner indicated he understood these, detective Corless had a conversation with the petitioner for 30 minutes. As officer Johnson and detective Glynn, detective Corless testified that he did not abuse the petitioner and did not see any other police officer do so. Detective Coreless admitted that he observed detectives Paladino and Kushner at Area 2 but denied seeing them with the petitioner. Detective Dignan testified that he was present

when the petitioner was brought to Area 2 and that he" brief contact" with him, but was not involved in his interrogation. Detective Dignan acknowledged that he informed the petitioner that he was in custody, but denied abusing him or observing anyone else abusing him at the station.

¶ 7 Finally, ASA Calihan testified at the suppression hearing that he arrived at Area 2 at 11:30 p.m. He and detective Corless met with the petitioner in the interview room, where ASA Calihan observed the petitioner handcuffed and sitting in a chair. ASA Calihan advised the petitioner of his *Miranda* rights and the petitioner indicated that he understood them. ASA Calihan also asked the petitioner whether he had been treated fairly by the police and the petitioner responded, "Yes." ASA Calihan then spoke with the petitioner about the murder, and the petitioner made a second oral statement. ASA Calihan left the police station at 2 a.m.

¶ 8 The petitioner did not testify at the suppression hearing. Rather, he presented to the court a black and white photograph of himself allegedly taken at the time of his police custody, and showing an injury to the petitioner's left eye.[1] He also attempted to present into evidence a court-reported statement by Green made on September 21, 1981. The trial court found this to be inadmissible, but allowed it to be published for the record. In the statement, Green averred that she was arrested with the petitioner and, while she was at the police station, she heard police beating him. Green heard chairs being shoved around and the petitioner "hollering." She further heard him say, "I have been set up." Green also averred that she was frightened because she had never been arrested before and because the police threatened that they would take her children away and put her in jail if she did not say "what they wanted to hear." Green further stated that

[1] The record before us does not contain a copy of this photograph. The state appellate defender in this cause has explained in her brief that in September 2010, she contacted the Cook County Public Defender's Office to obtain a copy of the photograph but was told that it could not be located.

when she saw the petitioner the next morning, he had a swollen lip, a black eye and a bloody wrist.

¶ 9 At the close of this testimony, the trial court denied the petitioner's motion to suppress, finding that there was no evidence presented of any physical or psychological abuse or brutality.[1]

¶ 10 The petitioner's cause then proceeded to a bench trial from which the following evidence was adduced.[2] At the time of the murder, the petitioner was living with Marilyn Green and her father, Louis Westry, at 9600 South Avalon in Chicago. Westry testified that a few months before the night in question, the victim, who was a friend, approached him and asked him to obtain a stolen car for him. Westry told the victim that he was on probation and could not do so, but that the petitioner could; accordingly, Westry introduced the victim to the petitioner. On August 4, 1980, the petitioner told Westry that he had secured a car for the victim, and Westry informed the victim of this. The victim then told Westry that he would come right over to his home to meet the petitioner.

¶ 11 Chicago police officer Martin Morrison testified that at 10:45 p.m., on August 4, 1980, he and his partner responded to a call of shots fired at a garage at 121 West 112th Place. Officer Morrison entered the garage and found the victim locked in the trunk of a car, calling for help; he had been shot multiple times in the face, chest, back and neck. The victim was taken to the hospital, and officer Morrison recovered four .45 caliber casings and one bullet at the scene. At

[1]In addition to his motion to suppress his own statement, the petitioner also filed a motion *in limine* to bar any statement made by the victim after he was shot. While denying the petitioner's motion to suppress, the court also denied his motion *in limine*.

[2]These underlying facts have been set forth in the petitioner's direct appeal before this Court. See *People v. Hatch*, 190 Ill. App. 3d 1004 (1989).

the hospital, the victim told officer Morrison that a man he knew as "Jeff" who lived at 9600 South Avalon had shot him and taken $300 from him.

¶ 12 Detectives Corless and Dignan arrived at the hospital soon after and also spoke with the victim. The victim told these detectives that he had gone to Westry's home to meet a man he knew as "Jeff," who was going to take him to see a stolen vehicle that the victim wanted to purchase. After leaving Westry's house, the victim and the man he knew as "Jeff" went to a garage at 121 West 112th Place, where "Jeff" asked the victim to help him open the garage door. When the victim went to help him, "Jeff" pulled out a .45 caliber semiautomatic pistol, told the victim this was a robbery, and shot him multiple times; "Jeff" also took $300 cash from him. The victim further told police that "Jeff" forced him to get into the trunk of a car in the garage, put the gun against his head and pulled the trigger; however, the gun failed to discharge, and "Jeff" closed the trunk and left. Detective Dignan admitted that he never showed the victim photographs of possible offenders while speaking with him in the hospital, and that the victim therefore never identified the petitioner as the offender.

¶ 13 The evidence presented at trial further established that the victim died on August 6, 1980. Cook County Medical Examiner, Dr. Robert Kirschner testified that he performed the autopsy on the victim and concluded that he died as a result of several gunshot wounds including, close-range through-and-through gunshot wounds to his face and shoulder and three gunshot wounds to the back.

¶ 14 Further evidence was presented that on August 5, 1980, the day after the incident, the petitioner went to a currency exchange and attempted to cash a check on an account from National Acoustics, a company owned by the victim. When the owner of the currency exchange

called the company to verify the check, she was told that the check had been stolen in a holdup. She called police and tried to detain the petitioner, but he left.

¶ 15 Chicago police officer Johnson testified that soon thereafter, he arrived at the currency exchange and obtained a description of the petitioner from the owner. Officer Johnson and his partner found the petitioner nearby with Green, stopped him, advised him of his rights and put him in their squad car. Officer Johnson drove the petitioner to the currency exchange, where he was met by Detective Corless. Detective Coreless took the petitioner inside the currency exchange where the owner identified him as the man who had tried to cash the stolen check. While at the currency exchange, Detective Coreless searched the petitioner and found a set of keys on his person which was later identified as belonging to the victim. Officer Johnson and his partner then transported the petitioner to Area 4 police station. En route to the station, Officer Johnson noticed that the petitioner was moving around in the backseat of the squad car suspiciously. He subsequently searched the backseat and found a white General Motors key, a notice to appear complaint form with the petitioner's name on it, and a live .45 caliber cartridge. Once the petitioner was brought into the police station, he was searched. During this search, police recovered two blood-soaked $50 bills in his sock.

¶ 16 Forensic evidence presented at trial revealed that the live .45 caliber cartridge recovered in the backseat of the police car in which the petitioner was transported had been chambered in and extracted from the same gun as the four casings recovered at the scene of the murder. Also, laboratory testing on the blood from the two $50 bills recovered in the petitioner's sock revealed that it was the same type as the victim's blood. In addition, Rosemary Magoon, the victim's wife, testified that on the night the victim was shot, he had in his possession a set of keys (later recovered on the petitioner), National Acoustics' checkbook and a large amount of money.

Rosemary further confirmed at trial that the signature on the National Acoustics check recovered in this cause was not the victim's signature.

¶ 17 The petitioner's statement to police was published to the court by ASA Calihan. In that statement, the petitioner recounted that he was at Westry's home on the night of the murder and was waiting to meet the victim to sell him a stolen car he had obtained for him. The plan was for the petitioner to drive the car to Wisconsin with the victim following in his own car, and the exchange would take place there. However, the petitioner became scared that evening and told the victim to go to a garage on 112th Place to pick up the car. After the petitioner told him this and gave him directions to the garage, the victim gave the petitioner a check for $250, got into his truck and drove away. The petitioner then drove to his father's home and stayed there for the rest of the evening, drinking with friends. ASA Calihan further testified that, when confronted with the bloody $50 bills and the victim's keys recovered from his person at the time of his arrest, the petitioner shook his head and said "no, no" over and over; when confronted with the bullet found in the backseat of the squad car which matched those at the scene, the petitioner did not respond.

¶ 18 At the close of trial, the trial judge found the petitioner guilty of murder and armed robbery, and sentenced him to natural life in prison.

¶ 19 In his posttrial motion, filed by private counsel, the petitioner asserted, *inter alia*, that his statement to police should have been suppressed and excluded from trial because it had been coerced by police through abuse. In addition, private counsel informed the court that he tried to locate Green, but that Green was avoiding him. The petitioner's motion further asserted that the real offender was Westry. The trial court denied the petitioner's motion, but issued a bench warrant for Green. The petitioner then filed a direct appeal with this court raising six issues,

namely that: (1) he was not proven guilty of armed robbery beyond a reasonable doubt; (2) he was not proven guilty of murder beyond a reasonable doubt; (3) the trial court erroneously allowed the victim's statements; (4) these statements were erroneously admitted as evidence of the crimes; (5) a tainted *venire* forced him to waive his right to a jury trial; and (6) his sentence was an abuse of discretion. Following review of each of these issues, we affirmed the petitioner's conviction and sentence.[3] See *People v. Hatch*, 190 Ill. App. 3d at 1018. In so doing, we reviewed the evidence at trial and found it to be overwhelming of his guilt. See *Hatch*, 190 Ill. App. 3d 1015-16.[4]

¶ 20 In November 1983, the petitioner filed his first *pro se* postconviction petitioner, therein alleging that detective Corless had committed perjury when he testified that he found the victim's keys on the petitioner while in custody. The petition, however, was withdrawn, as the petitioner's direct appeal was pending before this court. Later, in September 1991 (following his direct appeal), the petitioner filed an amended postconviction petition, to which he attached an affidavit from Green wherein she stated that she heard police beating the petitioner while they were in custody. The petitioner also again raised the issue of detective Corless' perjury, and asserted ineffective assistance of trial and appellate counsel. The State filed a motion to dismiss the petitioner's postconviction petition, the trial court granted the State's motion, and this Court

[3]Before trial began, the petitioner filed a *habeas corpus* petition alleging the violation of his due process rights because he had been denied a preliminary hearing and a speedy trial. The petition was dismissed and he appealed. That appeal from the denial of his *habeas corpus* petition was consolidated with his direct appeal from his convictions. Upon affirming his convictions, this Court also affirmed the denial of his petition. See *Hatch*, 190 Ill. App. 3d at 1012.

[4]For the record, we note that the petitioner filed for review of his direct appeal with our state supreme court, which was denied. See *People v. Hatch*, 131 Ill. 2d 566 (1990). He also sought a *writ of certiorai* in the United States Supreme Court, which was also denied. See *Hatch v. Illinois*, 498 U.S. 845 (1990).

affirmed that dismissal upon the petitioner's appeal. See *People v. Hatch*, No. 1-94-0492 (May 8, 1995) (unpublished order under Supreme Court Rule 23).

¶ 21 In September 2000, the petitioner filed another petition for *habeas corpus*, arguing that his sentence violated *Apprendi*. This petition was denied. The petitioner moved for reconsideration and the trial court denied his motion, but modified his sentence to include a life sentence for murder and a 30-year term of imprisonment for armed robbery. However, the trial court then dismissed its modification. The petitioner appealed from both the denial of his petition for *habeas corpus* and the denial of his motion to reconsider. In a consolidated matter, this court once again affirmed and, "without disturbing [his] conviction and life sentence for murder," ordered the mittimus to be amended to reflect that no sentence was ever imposed for the armed robbery conviction. See *People v. Hatch*, Nos. 1-01-0475, 1-01-3411 (cons.) (March 31, 2003) (unpublished order under Supreme Court Rule 23).

¶ 22 During the pendency of that appeal, the petitioner filed a *pro se* motion for relief from judgment pursuant to section 2-1401 of the Code of Civil Procedure (Code) (735 ILCS 5/2-1401 (West 2002)), asserting that the sentencing statutes which formed the basis of his life sentence were ambiguous and conflicting. The trial court dismissed that motion and, following the denial of a motion to reconsider together with a "Notice of Claim of Unconstitutionality of Statutes," this Court affirmed. See *People v. Hatch*, No. 1-03-0062 (September 26, 2003) (unpublished order under Supreme Court Rule 23). Soon thereafter, the petitioner filed a successive *pro se* motion for relief from judgment pursuant to section 2-1401 of the Code, repeating his argument that the sentencing statutes were in conflict. The trial court dismissed the petitioner's motion,

along with a motion to reconsider, and, upon review, this court affirmed.[5] See *People v. Hatch*, No. 1-04-1467 (September 23, 2005) (unpublished order under Supreme Court Rule 23). The petitioner then filed an "Emergency Petition for Order of *Habeas Corpus*," again challenging the constitutionality and propriety of his sentence. The trial court dismissed that petition.

¶ 23 On June 22, 2009, the petitioner filed a motion for leave to file a successive postconviction petition pursuant to section 122-1(f) of the Post-Conviction Hearing Act (Act) (725 ILCS 5/122-1(f) (West 2008)). In this motion, the petitioner *inter alia*, alleged, as he had in his initial postconviction petition, that he had been abused while in police custody at Area 2, that he was innocent and that he was "set up." This time, the petitioner specifically named his abusers as detectives Dignan and Corless. Claiming that he was presenting "newly discovered evidence" of "systemic torture at Area 2," the petitioner cited the Report of the Special State's Attorney released in 2006, appellate cases wherein the petitioners raised similar allegations of abuse at Area 2[6], and the Chicago Police Department's Office of Professional Standards Report of Investigator Michael Goldston (Goldston Report). The petitioner insisted that these constituted the requisite "cause and prejudice" necessary for leave to file a successive postconviction petition under section 122-1(f). In addition, he argued that these documents, together with Marilyn Green's August 23, 1991, affidavit supported his claim of "actual innocence." In this vein, the petitioner further pointed out that the "material witness bench warrant issued for *** Green ha[d]

[5]In the midst of these collateral proceedings, the petitioner in 2004 filed a *pro se* "motion for leave to file petition for mandamus" with our state supreme court, which that court denied, along with a motion to reconsider.

[6]These cases included: *People v. Banks*, 192 Ill. App. 3d 986 (1989); *People v. Bates*, 267 Ill. App. 3d 503 (1994); *People v. Orange*, 168 Ill. 2d 138 (1995); *People v. Cannon*, 293 Ill. App. 3d 634 (1997); and *People v. Patterson*, 192 Ill. 2d 93 (2000).

never been executed denying him due process of law and testimony of a witness who c[ould] substantiate [his] claims of torture and actual innocence."

¶ 24 Upon consideration, the trial court denied the petitioner's motion, and he appealed. On appeal, we affirmed the trial court's order. See *People v. Hatch*, 1-09-3326 (unpublished order pursuant to Illinois Supreme Court Rule 23). In doing so, we explicitly found that the petitioner had met the requisite "cause" necessary for leave to file his successive postconviction petition. See *Hatch*, 1-09-3326 (unpublished order pursuant to Illinois Supreme Court Rule 23). Nevertheless we concluded that the trial court correctly denied the petitioner's motion for leave to file the successive postconviction petition because the petitioner had failed to satisfy the "prejudice" prong, where the evidence of his guilt at trial was "overwhelming" so that even without the introduction of his incriminating statements to police, there was no probability that the outcome of his proceedings would have been different. See *Hatch*, 1-09-3326 (unpublished order pursuant to Illinois Supreme Court Rule 23). For that same reason, we concluded that under the circumstances of this case, the likelihood of exoneration was slim, so that the petitioner could not establish "actual innocence." See *Hatch*, 1-09-3326 (unpublished order pursuant to Illinois Supreme Court Rule 23)

¶ 25 On November 5, 2012, the petitioner filed a *pro se* "Motion for Leave to Reinstate Successive Petition for Post-Conviction Relief Pursuant to the Supreme Court's Mandate in People v. *Stanley Wrice*." In that motion, the petitioner argued that pursuant to the Illinois Supreme Court's new decision in *People v. Wrice*, 2012 IL 111860, he should be "allowed to relitigate his successive petition for postconviction relief, where the cause prong of the cause and prejudice test was already demonstrated *** and as the *Wrice* court now teaches us, use of a

defendant's physically coerced confession (statements) is never harmless error, and prejudice is automatically presumed."

¶ 26 On December 7, 2012, the trial court characterized the petitioner's motion as a "successive P.C. petition." Subsequently, on March 15, 2013, the court entered a written order denying the petitioner leave to file his petition. The trial court found that the petitioner demonstrated "cause" under section 5/122-1(f) of the Act (725 ILCS 5/122-1(f) (West 2008)) because the *Wrice*, 2012 IL 111860, decision was not decided until after he filed his initial successive postconviction petition. Nevertheless, the court found that the petitioner failed to establish "prejudice." The trial court further held that the "petitioner will be sanctioned the next time he files a repetitive and frivolous pleading with this court" and then instructed the clerk of the circuit court "not to accept further filings from [the] petitioner until satisfaction of any sanction imposed."

¶ 27 The trial court then entered a separate written order assessing fees and costs against the petitioner. In that order, the court first found that the petitioner's motion for lave to file a successive petition was "frivolous" because (1) it lacked an arguable basis in law or fact; (2) the allegations and other factual contentions did not have evidentiary support; and (3) the filings, in toto, were presented to hinder, cause unnecessary delay and needlessly increase the cost of litigation. Pursuant to section 105/27.2(a) of the Clerks of Court Act (CCA) (705 ILCS 105/27.2(a) (West 2012)), the court then ordered that the petitioner be assessed with $105 in court costs, $90 for filing a petition to vacate, modify or reconsider final judgment, and $15 in mailing fees. In addition, the court ordered that in satisfaction of this assessment, the Illinois Department of Corrections (IDOC) collect a first time payment of 50% of the average monthly balance of the petitioner's trust fund account for the past six months, and that thereafter 50% of

all deposits into the petitioner's account be withheld until the assessment costs were collected in full.

¶ 28 On April 2, 2013, the petitioner filed a *pro se* motion for "Reconsideration of Order Denying Leave to Reinstate Successive Petition for Post-Conviction Relief and Order of Costs." The trial court denied the petitioner's motion for reconsideration on April 4, 2013. The petitioner now appeals.

¶ 29 II. ANALYSIS

¶ 30 On appeal, the petitioner contends: (1) that the trial court erred in denying him leave to file a successive postconviction petition where pursuant to the Illinois Supreme Court decision in *Wrice*, 2012 IL 111860 he established the requisite cause and prejudice; (2) the trial court erred in imposing frivolous filing fees where the petitioner's pleadings were not frivolous; and (3) the trial court exceeded its authority when it instructed the clerk of the circuit court not to accept any of the petitioner's future filings.

¶ 31 We begin by addressing the trial court's denial of the petitioner's motion for leave to file his successive postconviction petition. The Post-Conviction Hearing Act provides a means by which a petitioner may challenge his conviction for "substantial deprivation of federal or state constitutional rights." *People v. Tenner*, 175 Ill. 2d 372, 378 (1997); *People v. Edwards*, 2012 IL 111711, ¶ 21. A postconviction proceeding is a collateral attack on a prior conviction and sentence; thus, it "is not a substitute for, or an addendum to, direct appeal" but, instead, allows inquiry into constitutional issues that were not, nor could have been, determined on direct appeal. *People v. Kokoraleis*, 159 Ill. 2d 325, 328 (1994); see *Edwards*, 2012 IL 111711, ¶ 21; *People v. Barrow*, 195 Ill. 2d 506, 519 (2001). Generally, the Act intimates the filing of only one postconviction petition. See 725 ILCS 5/122-1(f) (West 2008); *Edwards*, 2012 IL 111711, ¶

21; *People v. Simmons*, 388 Ill. App. 3d 599, 605 (2009); see also *People v. Morgan*, 212 Ill. 2d 148, 153 (2004). Consequently, in order to file a successive postconviction petition, a petitioner must first obtain leave of court. See *Edwards*, 2012 IL 111711, ¶ 21 (citing *People v. Tidwell*, 236 Ill .2d 150, 157 (2010)); *Simmons*, 388 Ill. App. 3d at 605; *People v. DeBerry*, 372 Ill. App. 3d 1056, 1060 (2007) ("section 122-1(f) unequivocally requires that a petitioner *must* obtain leave of court *before* filing a successive petition" (emphasis in original)).

¶ 32 To obtain such leave, section 122-1(f) of the Act requires a the petitioner to "demonstrate[] cause for his or her failure to bring the claim in his or her initial post[]conviction proceedings and [that] prejudice results from that failure." 725 ILCS 5/122-1(f) (West 2004); see *People v. Pitsonbarger*, 205 Ill. 2d 444, 458 (2002) (successive filing allowed only when the petitioner meets this "cause-and-prejudice test"). To establish cause, the petitioner must identify an objective factor that impeded his ability to raise a specific claim during his initial postconviction proceedings. See 725 ILCS 5/122-1(f) (West 2004); see *Morgan*, 212 Ill. 2d at 153-54; *Pitsonbarger*, 205 Ill. 2d at 458. Conjunctively, to establish prejudice, the petitioner must demonstrate that the error not raised in his initial postconviction proceedings so infected the trial that his resulting conviction violated due process. See 725 ILCS 5/122-1(f) (West 2004); see *Morgan*, 212 Ill. 2d at 154; *Pitsonbarger*, 205 Ill. 2d at 458. We review the trial court's ruling on whether the petitioner has satisfied the cause-and-prejudice test of section 122-1(f) pursuant to a *de novo* standard of review. See *People v. Williams*, 394 Ill. App. 3d 236, 242 (2009).

¶ 33 In the present case, the petitioner contends that by citing to the Illinois Supreme Court decision in *Wrice*, 2012 IL 111860, he has established both the requisite cause and prejudice so as to be entitled to refile his successive postconviction petition. Specifically, the petitioner contends that the trial court below properly concluded that by citing to *Wrice*, which was issued

both after the petitioner filed his initial postconviction petition in 1991 and his successive postconviction petition in 2009, he fulfilled his burden in establishing the requisite cause, *i.e*. an objective factor that impeded his ability to raise his claim in the initial postconviction proceedings. The petitioner further notes that in affirming the dismissal of the successive postconviction petition that he now seeks to refile, this appellate court already determined that he had demonstrated the requisite cause. In addition, the petitioner contends that pursuant to the recent decision in *Wrice*, his allegations of physical coercion were sufficient to satisfy the prejudice prong because under this new precedent the use of a physically coerced confession as substantive evidence of guilt is never harmless error. The State on the other hand argues that the petitioner has failed to establish both cause and prejudice because the decision in *Wrice* did not "reflect a change in Illinois law," but merely limited the application of a longstanding rule that was available to the petitioner prior to his earlier postconviction petitions (see *People v. Wilson*, 166 Ill. 2d 29, 41 (1978)). For the reasons that follow, we disagree with the State.

¶ 34 In *Wrice*, the defendant sought leave to file a second successive postconviction petition challenging his convictions for rape and deviate sexual assault on the basis that newly discovered evidence supported his prior claim that his confession was the product of police torture and brutality. *Wrice*, 2012 IL 111860, ¶ 1.

¶ 35 Prior to trial, Wrice had filed a motion to suppress statements he made to police arguing that he had been tortured at Area 2. *Wrice*, 2012 IL 111860, ¶ 5. His motion to suppress was denied. *Wrice*, 2012 IL 111860, ¶ 12. The defendant was thereafter convicted of multiple crimes, which were affirmed on direct appeal. *Wrice*, 2012 IL 111860, ¶ 37-38. The defendant filed an initial *pro se* postconviction petition in 1991 alleging abuse, but his petition was denied. *Wrice*, 2012 IL 111860, ¶ 39. In 2000, the defendant sought leave to file a successive postconviction petition,

again alleging abuse. *Wrice*, 2012 IL 111860, ¶ 40. That petition was denied and the denial affirmed on appeal. *Wrice*, 2012 IL 111860, ¶ 40.

¶ 36 In October 2007, the defendant sought leave to file a second successive petition, wherein he relied on the Report of the Special State's Attorney released in 2006 (hereinafter the 2006 Report), and documenting systematic torture at Area 2. *Wrice*, 2012 IL 111860, ¶ 41. That petition was also denied. *Wrice*, 2012 IL 111860, ¶ 43. On appeal, the appellate court reversed and remanded for a third-stage evidentiary hearing, holding that the defendant had established cause and prejudice for a successive postconviction petition. *Wrice*, 2012 IL 111860, ¶ 43. The appellate court concluded that the defendant had established cause because, while he may have raised torture claims in previous proceedings, he could not have cited the 2006 Report as corroboration because the 2006 Report had not been released. *Wrice*, 2012 IL 111860, ¶ 43. This appellate court further found that the defendant satisfied the prejudice prong of the test because " '[t]he use of a defendant's coerced confession as substantive evidence of his guilt is *never* harmless error.' (Emphasis added.) [Citation.]" *Wrice*, 2012 IL 111860, ¶ 43. Specifically, the appellate court found that the defendant had consistently claimed that he was tortured, his claims of being beaten were strikingly similar to those of other prisoners in Areas 2 and 3, the officers implicated by the defendant were identified in other allegations of torture and the defendant's allegations were consistent with the 2006 Report's findings of torture under the standard of proof beyond a reasonable doubt. *Wrice*, 2012 IL 111860, ¶ 43. Our supreme court granted the State's petition for leave to appeal. *Wrice*, 2012 IL 111860, ¶ 44.

¶ 37 On appeal to the supreme court, the State conceded that the defendant had satisfied the cause prong of the cause-and-prejudice test because the defendant had alleged and this court had found that the defendant could not have argued that the 2006 Report corroborated his claims of police

torture in his prior postconviction petitions because the report was not released until 2006, after he filed his previous petitions. *Wrice*, 2012 IL 111860, ¶ 43. The State only challenged this court's determination that the defendant had satisfied the prejudice prong, arguing that pursuant to the United States Supreme Court decision in *Arizona v. Fulminante*, 499 U.S. 279 (1991), the admission of a coerced confession was subject to harmless-error review and that therefore the admission of the defendant's allegedly coerced confession was harmless beyond a reasonable doubt. *Wrice*, 2012 IL 111860, ¶ 49.

¶ 38 After a lengthy discussion of whether a harmless-error analysis should apply to coerced confessions, the court agreed with the State and held that pursuant to the decision in *Fulminante*, 499 U.S. 279, its prior holding in *People v. Wilson*, 116 Ill. 2d 29, 41 (1987), "that 'use of a defendant's coerced confession as substantive evidence of his guilt is never harmless error' (*Wilson*, 116 Ill. 2d at 41), *cannot stand* as a matter of federal constitutional law." (Emphasis added). *Wrice*, 2012 IL 111860, ¶ 71. The court in *Wrice*, however, then distinguished *Fulminate*, finding that the mental coercion of the defendant by his cellmate, an FBI informant, in that case was "qualitatively different" from the physical coercion at issue at bar. *Wrice*, 2012 IL 111860, ¶ 73. The court held that physical coercion constituted "an egregious violation of an underlying principle of our criminal justice system"--namely that "ours is an accusatorial and not an inquisitorial system." (Internal quotation marks omitted). *Wrice*, 2012 IL 111860, ¶ 73. Accordingly, relying on its prior decision in *Wilson*, the court in *Wrice* carved out a narrow exception to *Fulminate*, holding that the "use of a defendant's *physically* coerced confession as substantive evidence of his guilt is never harmless error." (Emphasis in original). *Wrice*, 2012 IL 111860, ¶ 71.

¶ 39 In doing so, our supreme court explicitly overruled its prior decision in *People v. Mahaffey*,

194 Ill. 2d 154 (2000), wherein it had considered the overwhelming evidence of the defendant's guilt to conclude that the result of the defendant's trial would not have been different had his coerced confessions been suppressed. In addition, the court in *Wrice* rejected the State's argument that this "*per se* rule" would encourage frivolous claims of coerced confessions in successive postconviction petitions because of the purported ease with which a defendant may now establish prejudice." *Wrice*, 2012 IL 111860, ¶ 85. In that respect, the court reiterated that to proceed with a successive postconviction petition, a defendant would still be obligated to establish cause, and that even where the defendant succeeded in establishing both cause and prejudice, the "[s]atisfaction of the test [would] merely allow[] the petition to proceed" and would "not relieve the defendant of his evidentiary burden in the postconviction proceedings." *Wrice*, 2012 IL 111860, ¶ 85.

¶ 40 Accordingly, applying its holding to the defendant in that case, the court ruled that a harmless-error analysis was inapplicable to the defendant's postconviction claim that his confession was physically coerced by police officers at Area 2. *Wrice*, 2012 IL 111860, ¶ 71. Therefore, the court concluded that the defendant had satisfied the prejudice prong of the cause-and-prejudice test so as to be permitted to proceed with his successive postconviction petition. *Wrice*, 2012 IL 111860, ¶ 84. As a result, the court affirmed the judgment of the appellate court reversing the trial court's order denying defendant leave to file his second successive postconviction petition, and remanded the cause for the appointment of postconviction counsel and second-stage postconviction proceedings. *Wrice*, 2012 IL 111860, ¶ 90.

¶ 41 Since then, in *People v. Nicholas*, 2013 IL App (1st) 103202, this appellate court has had occasion to analyze the decision in *Wrice*, and has reaffirmed that by its ruling our supreme court explicitly "determined that its prior holding in *** *Wilson*, 116 Ill. 2d 29, 41 (1987) was no

longer constitutionally sound," but must be "recast" as holding that the use of a defendant's physically coerced confession as substantive evidence of guilt is never harmless error. *Nicholas*, 2013 IL App (1st) 103202, ¶ 39. Accordingly, in *Nicholas*, we held that a defendant who alleged that his physically coerced confession was used as substantive evidence of his guilt at trial had established the requisite prejudice so as to be permitted leave to file his successive postconviction petition. *Nicholas*, 2013 IL App (1st) 103202, ¶ 40.

¶ 42 Applying the decisions in *Wrice* and *Nicholas* to the present case we are compelled to conclude that the petitioner has met the cause-and-prejudice test so as to be able to proceed on his successive postconviction petition. The *Wrice* decision was not issued until after the petitioner filed both his initial postconviction petition and his first successive postconviction petition. What is more, in our prior review of the same successive petition that the petitioner now seeks leave to refile, we held that the petitioner had met his burden in establishing cause. Under *Wrice*, we must now hold that the petitioner has also met the prejudice prong, regardless of whether the evidence at the petitioner's trial overwhelmingly supported his guilt so that there was no likelihood that the outcome of his proceedings would have been different had his physically coerced confession been suppressed. See *Wrice*, 2012 IL 111860, ¶ 71.

¶ 43 In that respect, we reject the State's contention that *Wrice* is inapplicable because the petitioner never actually "confessed" to shooting the victim to police. The record reveals that the petitioner's statement to police was introduced as substantive evidence by the prosecution at trial, and that this was the only direct evidence of the petitioner's contact with the victim on the night of the shooting. In his statement, the petitioner admitted to having met the victim to sell him a stolen vehicle on the night in question and to instructing the victim to go to the garage where the victim was later shot and found by police. What is more, "it is well settled that a

defendant's assertion that he did not confess does not preclude the alternative argument that any confession should be suppressed." See *Wrice*, 2012 IL 111860, ¶¶ 53-54. ("Evidence of coercion is not rendered irrelevant simply because the defendant has denied confessing"). Accordingly, we find that the petitioner here is entitled to proceed on his claim that his confession was coerced.

¶ 44 Because we find that the petitioner has satisfied the cause and prejudice test so as to proceed with his successive postconviction petition, we also necessarily find that his pleadings were not frivolous. Accordingly, any costs and fees imposed on the petitioner by the trial court were made in error, as was any instruction by the court to the clerk "not to accept further filings from [the] petitioner until satisfaction of any sanction imposed."

¶ 45 III. CONCLUSION

¶ 46 For the aforementioned reasons we reverse the orders of the circuit court and remand for further postconviction proceedings.

¶ 47 Reversed and remanded