SIXTH DIVISION
September 18, 2015

No. 1-13-3282

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. 90 CR 26583
	)	
THOMAS EVANS,	)	Honorable
	)	Rosemary Grant Higgins,
Defendant-Appellant.	)	Judge Presiding.

PRESIDING JUSTICE ROCHFORD delivered the judgment of the court.
Justices Hall and Delort concurred in the judgment.

ORDER

¶ 1 *Held*: We affirmed the order denying defendant leave to file a successive, postconviction petition, where defendant failed to satisfy the cause-and-prejudice test.

¶ 2 Defendant, Thomas Evans, appeals the circuit court's order denying him leave to file his successive, postconviction petition. On appeal, defendant alleges he satisfied the cause-and-prejudice test such that the circuit court should have granted him leave to file the successive, postconviction petition. We affirm.

¶ 3 In August 1993, a jury convicted defendant of first-degree murder for the 1990 shootings of his wife and child. In November 1993, the trial court sentenced defendant to natural life imprisonment. In February 1996, this court reversed and remanded for a new trial because the

trial court erred when it denied defendant's request for a second-degree murder instruction. See *People v. Evans*, No. 1-94-0043 (1996) (unpublished order under Supreme Court Rule 23).

¶ 4 On remand, a bench trial was held. At the bench trial, Martha Ollie testified that her daughter, Mary Ann Ollie, married defendant in May 1990. Defendant and Mary Ann had two sons, four-year-old DeMarcus, and two-year-old DeAndre Evans. Defendant, Mary Ann, and her sons lived on the second floor of a two-flat located at 5701 South Damen Avenue in Chicago. Martha testified that Mary Ann was right-handed.

¶ 5 Officer Jill Elliott and her partner, Officer Maria Ellena Dyess, testified that on October 8, 1990, at about 3 a.m., they received a dispatch that a woman had been shot. The officers went to 5701 South Damen Avenue. A six-foot padlocked fence surrounded the backyard. They saw defendant lying in a puddle in the yard. His head was bloody and he was wearing only a t-shirt and underwear.

¶ 6 The officers eventually entered the rear of the building and saw blood on the wooden stairs leading up to the second floor. Upon entering the second-floor apartment, the officers discovered Mary Ann's body on the kitchen floor surrounded by a pool of blood. Mary Ann's left hand lay over a .45 caliber gun on her chest.

¶ 7 Officer Elliott testified that the blood in the kitchen extended into the dining room in a "dragging pattern." There were bare footprints in the blood. Officer Elliott discovered a large pool of blood, along with four gun shell casings, on the dining room floor. Blood was also in the living room leading into a bedroom. Officer Elliott entered the bedroom and found two small children, DeAndre and DeMarcus, in bed. DeAndre was lying in a fetal position, and DeMarcus was huddled, nervously and distressed, against a wall. Officer Elliott touched DeAndre's

forehead and he made a gurgling sound and blood came out of his mouth. Paramedics were called and DeAndre was later, pronounced dead.

¶ 8 Officer Dyess testified that, after briefly inspecting the upstairs, she returned to the backyard and asked defendant what had happened. Defendant replied he did not know, and that he entered the house, heard two shots, and ran downstairs. Defendant further stated that his wife and children remained upstairs.

¶ 9 Officer Joe Moran testified that, at about 4 a.m. on October 8, 1990, he went to 5701 South Damen Avenue with his partner, Officer Robert Klaser, to assist in the homicide investigation. Officer Moran observed gunshot wounds to Mary Ann's body and head. Mary Ann's left hand lay over a gun on her chest but her fingers did not grip the weapon. Officer Moran recovered four spent casings from the living room floor and one spent casing from the kitchen. The recovered weapon and the five recovered spent casings were .45 caliber.

¶ 10 The parties stipulated to the testimony given at the prior trial by Brandon Lenz, the gunshot residue examiner from the Chicago police crime lab; Dr. Edmond Donoghue, a doctor from the Cook County Medical Examiner's office; and Dr. Daniel Kacey, the emergency room doctor. Mr. Lenz testified that the gunshot residue found on defendant and Mary Ann meant that both had either fired a gun, or were in close proximity to a discharged firearm.

¶ 11 Dr. Donoghue testified he performed the autopsy of Mary Ann's body. Mary Ann suffered numerous abrasions and four gunshot wounds. The two gunshot wounds to her head and the one gunshot wound to her right hand did not evidence any close-range firing. The gunshot wound to her left thigh evidenced close-range firing. Three of the gunshot wounds were "through and through," meaning the bullets passed completely through the body. One of the

bullets that passed through Mary Ann could have struck DeAndre. Mary Ann's cause of death was multiple gunshot wounds.

¶ 12 Dr. Robert Stein performed the autopsy of DeAndre's body. DeAndre was shot once in the back, near his left shoulder. The bullet tore through DeAnde's spinal cord, his left lung, and exited near his left armpit. DeAndre died from this gunshot wound, and his death was ruled a homicide. DeAndre also suffered a gunshot graze wound to his left elbow and chest.

¶ 13 Dr. Daniel Kacey testified that the hospital admitted defendant on October 8, 1990, for "a head wound and altered mental status." Defendant's blood alcohol level was 0.131, and he had cuts on one of his toes and right ankle. Defendant was unable to respond to verbal commands but he did respond to painful stimuli. The doctors found and removed a large wooden splinter from defendant's head. His head injury was consistent with a fall down a flight of stairs. Defendant did not suffer any neurological injury.

¶ 14 Defendant testified that on the evening of October 7, 1990, he was working at a garage repairing cars. While he was at the garage, he consumed some beer and whiskey with friends. Defendant drove home around 3 a.m. When defendant arrived home, his head was spinning, so he sat on his back steps for a minute. He took off his shoes and went inside to take a bath. Defendant went into the dining room, removed his work clothes, walked into the kitchen and saw Mary Ann exit the bedroom.

¶ 15 Defendant testified he and Mary Ann began to argue and a physical fight ensued. Mary Ann pulled defendant's hair and snatched the gold chains he wore on his neck. Defendant attempted to withdraw, and went into the bathroom. Mary Ann came into the bathroom and hit defendant on the head above his left eyebrow, knocking him unconscious. When he awoke, defendant saw Mary Ann pointing one of their two .45 caliber guns at him. Defendant struggled

for the gun, and it discharged. Defendant did not know if the gun went off more than once and, "after a while," Mary Ann fell to the ground.

¶ 16 Defendant testified he walked around in a daze for a minute and went to see if Mary Ann was okay. Then he called the police and went to check on his kids. Defendant then exited through the back door and fell down the wooden stairs. The next thing he remembered was awakening "drunk or whatever it was" in the hospital.

¶ 17 On cross-examination, defendant denied that he moved Mary Ann's body or placed the gun on her chest. He claimed that, the only time he touched her body, was when she was in the hallway between the dining room and kitchen and he tried to comfort her, although he knew she was dead at the time.

¶ 18 Defendant testified that both his and Mary Ann's hands were on the gun when the shots were fired. He denied hitting Mary Ann in the head or cheek during the struggle.

¶ 19 Following all the evidence, the trial court convicted defendant of the first-degree murder of Mary Ann and DeAndre, and sentenced him to natural-life imprisonment. Upon imposition of his sentence, defendant told the trial court that prior to his first (jury) trial, the State had made an offer of 40 years' imprisonment in return for a guilty plea. Defendant told the trial court he did not accept the State's offer "because of the reason [he] didn't do this intentionally." The Assistant State's Attorney responded: "We never offered 40 years. We had an offer if we would take 40 years. The People never offered 40 years. The defendant wanted to plead guilty to 40 years. It was unacceptable to the People." Defendant stated that his trial counsel (jury counsel) at his jury trial had told him "they offered you 40." Defendant further stated that, if he had known he would have been convicted of two counts of first-degree murder and sentenced to

natural-life imprisonment, he would have taken the State's offer. The trial court offered no comment to this colloquy and instead appointed appellate counsel.

¶ 20 On direct appeal from defendant's conviction after the bench trial, this court affirmed defendant's conviction and sentence. *People v. Evans*, No. 1-99-1875 (2001) (unpublished order under Supreme Court Rule 23). In that decision, we rejected the single issue raised, finding "the mutual aspect of provocation is insufficient to mitigate defendant's first degree murder conviction to second degree murder." *Id.*

¶ 21 On January 28, 2002, defendant filed a *pro se* postconviction petition and supplemental petitions alleging various constitutional errors at his bench trial. Defendant essentially alleged the trial court induced him to waive a jury trial, and the State made prejudicial and erroneous statements in its closing argument, and wrongly suppressed a photograph. The petition further alleged that defense counsel at his bench trial (bench counsel) was ineffective for: neglecting to impeach Officer Elliott; present evidence of defendant's intoxication; call certain witnesses; demonstrate that Mary Ann had fired the gun; present evidence that a bullet may have passed through Mary Ann striking DeAndre; establish the chain of custody of the weapon; investigate the case; and fully advise defendant of the implications of waiving a jury trial.

¶ 22 On March 7, 2002, the trial court summarily dismissed defendant's *pro se* postconviction petition and supplemental petitions. Defendant appealed the summary dismissal order, raising the following issues:

> "[T]he State engaged in misconduct in making prejudicial and erroneous statements in its closing argument and defendant's [bench] counsel was ineffective in failing to: (1) produce evidence of his intoxication; (2) impeach Officer Elliott as to whether defendant was on the stretcher when she arrived at the scene; (3) investigate the chain of custody of

> the murder weapon where the weapon was lost and the weapon introduced at trial had a different identification number than the weapon found; and (4) fully advise defendant of the implications of waiving a jury trial and pleading guilty or not guilty."

See *People v. Evans*, No. 1-02-1110 (2003) (unpublished order under Supreme Court Rule 23).

¶ 23 This court affirmed the summary dismissal order. *Id.* As to defendant's claim that his bench counsel was ineffective for failing to explain the implications of pleading guilty or not guilty, we found the issue waived because defendant failed to raise it in his postconviction petition. *Id.*

¶ 24 Almost 10 years later, on August 8, 2013, defendant filed the instant successive *pro se* postconviction petition alleging, in pertinent part, that his jury counsel was ineffective during plea negotiations for advising him to reject the State's offer of 40 years' imprisonment in exchange for a guilty plea to one count of first-degree murder. Defendant asserted that he satisfied the requisite cause-and-prejudice test for successive postconviction petitions because: (1) cause was established by the case of *Lafler v. Cooper*, _ U.S. _, 132 S. Ct. 1376 (2012) (which we discuss later in this order); and (2) he was prejudiced because if he had not been misadvised, he would have accepted the offer and received a lesser sentence than the sentence of natural life imprisonment imposed on him following his jury trial and, again, following his bench trial.

¶ 25 On August 15, 2013, the postconviction court (which was different than the trial court which had convicted him on retrial of first-degree murder and dismissed his initial postconviction petition), denied defendant leave to file his successive postconviction petition, finding he had "already filed his post-conviction petition with [the trial court]. Previous order to stand."

¶ 26 Defendant now appeals from the postconviction court's order denying him leave to file his successive postconviction petition asserting his claim of ineffective assistance of jury counsel during plea negotiations. Defendant makes no argument on appeal regarding the other claims in his successive postconviction petition.

¶ 27 A postconviction proceeding is a collateral proceeding, rather than an appeal of the underlying judgment, and allows review of constitutional issues that were not, and could not have been, adjudicated on direct appeal. *People v. Ortiz*, 235 Ill. 2d 319, 328 (2009). Issues raised and decided on direct appeal are barred from further consideration by *res judicata*; issues that could have been raised, but were not, are considered waived. *Id*. at 328.

¶ 28 Consistent with these principles, section 5/122-1(f) of the Post-Conviction Hearing Act (Act) permits the filing of only one petition without leave of court and expressly provides that any claim not raised in the original or an amended petition is waived. (725 ILCS 5/122-1(f) (West 2012)).

¶ 29 Our supreme court has held that the statutory bar to a successive postconviction petition will be relaxed when "fundamental fairness so requires." *People v. Morgan*, 212 Ill. 2d 148, 153 (2004). Fundamental fairness allows the filing of a successive postconviction petition only when the petition satisfies the cause-and-prejudice test. *Ortiz*, 235 Ill. 2d at 329. Under this test, claims in a successive postconviction petition are barred unless defendant shows cause for failing to raise the claims in his initial postconviction petition and prejudice resulting from that failure. *People v. Jones*, 2013 IL App (1st) 113263, ¶ 12. To show cause, defendant must identify an objective factor external to the defense that impeded his ability to raise a specific claim during his initial postconviction proceedings. *People v. Sutherland*, 2013 IL App (1st) 113072, ¶ 16. To show prejudice, defendant must demonstrate that the claim not raised so infected the trial that

the resulting conviction or sentence violated due process. *Id*. The cause-and-prejudice test has been codified in section 5/122-1(f) of the Act. See 725 ILCS 5/122-1(f) (West 2012).

¶ 30 Even where defendant cannot show cause and prejudice, "his failure to raise a claim in an earlier petition will be excused if necessary to prevent a fundamental miscarriage of justice. To demonstrate such a miscarriage of justice, [defendant] must show actual innocence or, in the context of the death penalty, he must show that but for the claimed constitutional error he would not have been found eligible for the death penalty." *People v. Pitsonbarger*, 205 Ill. 2d 444, 459 (2002).

¶ 31 We review *de novo* defendant's contention that he is entitled to file a successive postconviction petition with respect to the ineffective assistance of counsel claim. *Sutherland*, 2013 IL App (1st) 113072, ¶ 17. Generally, to establish a claim of ineffective assistance of counsel, defendant must satisfy the two-prong test set forth in *Strickland v. Washington*, 466 U.S. 668 (1984). Defendant must prove: (1) his counsel's representation fell below an objective standard of reasonableness; and (2) counsel's deficient performance prejudiced defendant, such that there was a reasonable probability that the outcome of the proceeding would have been different. *People v. Hughes*, 2015 IL App (1st) 131188, ¶ 75.

¶ 32 In his successive postconviction petition, filed on August 8, 2013, defendant alleged that his jury counsel provided ineffective assistance by advising him to reject the State's offer of 40 years' imprisonment in exchange for a guilty plea to one count of first-degree murder. Defendant alleged his jury counsel's representation fell below an objective standard of reasonableness when counsel told him to reject the offer and proceed to trial because he would only be found guilty of second-degree murder. Taking jury counsel's advice, defendant contends he was prejudiced thereby because the jury subsequently convicted him of two counts of first-degree murder; he

was sentenced to natural-life imprisonment and; after the conviction was reversed on appeal and the cause remanded, he took a bench trial and was, again, convicted of two counts of first-degree murder and sentenced to natural-life imprisonment.

¶ 33 In his first postconviction petition filed on January 28, 2002, defendant failed to raise this issue of his jury counsel's ineffectiveness during plea negotiations even though: (1) the controlling law at the time defendant filed his first postconviction petition provided that defendant's right to effective assistance of counsel extends to plea negotiations (see *People v. Curry*, 178 Ill. 2d 509 (1997)); and (2) defendant was then aware of all the relevant facts pertinent to his claim of ineffective assistance.

¶ 34 As defendant failed to raise the issue of his jury counsel's ineffectiveness in his first postconviction petition, he may not be granted leave to file a successive postconviction petition asserting this issue unless he makes a showing of absolute innocence or he satisfies the cause-and-prejudice test. *Sutherland*, 2013 IL App (1st) 113072, ¶ 16.

¶ 35 Defendant makes no argument on appeal that he is actually innocent. Instead, defendant argues he has satisfied the cause-and-prejudice test. With respect to showing cause for not raising his ineffective assistance of counsel claim in his first postconviction petition, defendant contends he could not have then raised this claim because *Lafler*, had not yet been decided.

¶ 36 In *Lafler*, as well as in the companion case, *Missouri v. Frye*, _ U.S. _, 132 S. Ct. 1399 (2012), the United States Supreme Court held that, to show the necessary prejudice to maintain a claim of ineffective assistance of counsel during plea negotiations, a defendant must show a reasonable probability that: (1) the defendant would have accepted the plea offer had he been afforded effective assistance of counsel; (2) the plea would have been presented to the court, *i.e.*, that the defendant would have accepted the plea and the prosecution would not have withdrawn

it in light of intervening circumstances; (3) the court would have accepted its terms; and (4) the conviction or sentence, or both, under the offer's terms would have been less severe than under the judgment and sentence that were in fact imposed. *Lafler*, _ U.S. _, 132 S. Ct. at 1385; *Frye*, _ U.S. _, 132 S. Ct. at 1409. The *Lafler* and *Frye* decisions differed from our supreme court's analysis in *Curry*, which was the controlling law at the time of defendant's first postconviction petition. *Curry* held, in the context of a claim of ineffective assistance during plea negotiations, a defendant establishes the requisite prejudice by showing a reasonable probability that, absent his attorney's deficient advice, he would have accepted the plea offer. *Curry*, 178 Ill. 2d at 531. Unlike *Lafler* and *Frye*, *Curry* never addressed whether defendant need demonstrate a reasonable probability that the plea would have been entered without the prosecution canceling it, and rejected the contention that defendant must show that the trial judge would have accepted the plea agreement. *Id*. at 533-35. In *People v. Hale*, 2013 IL 113140, our supreme court held that *Lafler* and *Frye*, rather than *Curry*, now controls "and the factors set forth in those cases must now be relied upon in deciding if prejudice has been shown where a plea offer has lapsed or been rejected because of counsel's deficient performance." *Id*. ¶ 20.

¶ 37 Defendant argues that, at the time of his first postconviction petition, he did not have the benefit of the United States Supreme Court's explanation in *Lafler* as to how to analyze prejudice in the context of claims of ineffective assistance of counsel during plea bargaining and, therefore, he had cause for not raising his ineffectiveness claim until his successive postconviction petition, after *Lafler* was decided[1].

¶ 38 The State responds that new court rulings do not provide a basis to find cause for failing to raise an issue during initial postconviction proceedings, and it cites in support *People v.*

[1] In his argument, defendant focuses on the *Lafler* decision, and does not discuss *Frye*.

Parnell, 356 Ill. App. 3d 524 (2005), which held that " 'the lack of precedent for a position differs from "cause" for failing to raise an issue, and a defendant must raise the issue, even when the law is against him, to preserve it for review.' " *Id*. at 531 (quoting *People v. Leason*, 352 Ill. App. 3d 450, 454 (2004)). Thus, the State contends defendant cannot base his claim of cause on the fact that *Lafler* had not been decided at the time he filed his initial postconviction petition, and the State argues that we should not consider *Lafler* when deciding defendant's appeal.

¶ 39 We need not analyze the State's argument regarding the applicability of *Lafler*. Even assuming, without deciding, that we may consider *Lafler* here, we find that defendant did not show cause for failing to raise in his first postconviction petition his claim of ineffective assistance of jury counsel during plea negotiations. In support, we note that *Lafler* imposed *more* rigorous requirements for showing the necessary prejudice to maintain a claim of ineffective assistance of counsel during plea negotiations than the controlling case law (*Curry*) which was in effect at the time of defendant's first postconviction petition; specifically, whereas *Curry* only required defendant to show a reasonable probability he would have accepted the plea offer absent his counsel's negligence, *Lafler* imposed the additional requirements that defendant show that the prosecution would not have withdrawn the plea, and that the plea agreement would have been accepted by the trial judge. Thus, defendant would actually have had an *easier* time during his first postconviction proceedings of showing the requisite prejudice for his ineffective assistance of jury counsel claim, when *Curry* was controlling and *Lafler* had not yet been decided. Accordingly, *Lafler* provides no support for defendant's argument that he had cause for failing to raise his claim of ineffective assistance of jury counsel in his first postconviction petition.

¶ 40 Defendant argues that *People v. Perruquet*, 181 Ill. App. 3d 660 (1989), compels a different result. The defendant in *Perruquet* was convicted, following a jury trial, of deviate sexual assault, two counts of rape, and aggravated kidnapping. *Id*. at 661. The circuit court sentenced him to extended terms of 60 years' imprisonment on each of the convictions for deviate sexual assault and rape. *Id*. The circuit court also gave the defendant an extended term of 30 years' imprisonment on the aggravated kidnapping conviction. *Id*.

¶ 41 On direct appeal, the defendant in *Perruquet* argued that the extended-term sentence he received for aggravated kidnapping could not stand because, under the applicable sentencing statute, extended-term sentences could only be imposed for the most serious offense or offenses of which he was convicted. *Id*. The defendant argued that the rape and deviate sexual assault convictions were the most serious offenses and, therefore, he could not be given an extended-term sentence for the aggravated kidnapping conviction. *Id*. at 661-62. This court rejected the defendant's argument and affirmed his convictions. *Id*.

¶ 42 One year later, our supreme court issued an opinion in *People v. Jordan*, 103 Ill. 2d 192 (1984), indicating that this court had been wrong and that the defendant in *Perruquet* had been correct as to how the extended-term statute should be interpreted. *Perruquet*, 181 Ill. App. 3d at 662. Under the *Jordan* analysis, the defendant in *Perruquet* should not have been given an extended-term sentence for his aggravated kidnapping conviction. *Id*.

¶ 43 The defendant in *Perruquet* subsequently filed a postconviction petition, which was dismissed as frivolous and patently without merit. *Id*. On appeal, the defendant argued that, in light of *Jordan*, his extended-term sentence for aggravated kidnapping cannot stand. *Id*. This court agreed, holding that pursuant to *Jordan*, the extended-term sentence imposed by the circuit

court on the aggravated kidnapping conviction exceeded what was authorized by statute, and that the excess portion of the sentence is void. *Id*. at 663.

¶ 44 The State argued, in pertinent part, that the defendant should not be allowed to challenge the extended-term sentence because the issue was previously decided against him on direct appeal and is, therefore, *res judicata*. *Id*. This court disagreed, noting:

> "Principles of *res judicata* will not bar relitigation of a claim in a post-conviction proceeding where fundamental fairness so requires. [Citation.] Given that defendant's extended-term sentence for aggravated kidnapping has now been shown to be void, this is surely a case in which fundamental fairness requires that defendant be allowed to challenge that sentence again, our previous ruling on the matter notwithstanding." *Id*.

¶ 45 In the present case, defendant argues that, pursuant to *Perruquet*, fundamental fairness requires us to find that *Lafler* established cause for his failure to raise the ineffective assistance of jury counsel issue until his supplemental postconviction petition.

¶ 46 First, we note that, unlike here, *Perruquet* did not involve a supplemental postconviction petition or the applicability of the cause-and-prejudice test and, thus, is factually inapposite. Rather, *Perruquet* was an appeal from the dismissal of an initial postconviction petition, where this court held that a supreme court opinion issued after the direct appeal, and before the postconviction petition, inured to the benefit of the defendant in *Perruquet*, as it voided his extended-term sentence for the aggravated kidnapping conviction and, thus, compelled reversal of the dismissal order and modification of his sentence.

¶ 47 By contrast, the present case involves the denial of leave for defendant to file a supplemental postconviction petition, and the issue of whether defendant satisfied the cause-and-prejudice test. Also, unlike the supreme court opinion considered in *Perruquet*, the *Lafler*

opinion filed after defendant's first postconviction petition did *not* benefit defendant, but actually made it harder for him to prove his ineffective assistance of jury counsel claim than if he had raised that claim in his initial postconviction proceedings. Accordingly, as discussed earlier in this order, defendant has shown no cause for his failure to raise the claim of ineffective assistance of jury counsel in his first postconviction petition.

¶ 48 Defendant also argues he should be excused from having to show cause because he was not represented by legal counsel during his first postconviction proceeding. In support, defendant cites *Martinez v. Ryan*, _ U.S. _, 132 S. Ct. 1309 (2012). In *Martinez*, the United States Supreme Court recognized its prior ruling that an attorney's ignorance or inadvertence in a postconviction proceeding does not qualify as cause to excuse procedural default in a *habeas* proceeding. *Martinez*, _ U.S. _, 132 S. Ct. at 1316. The Court then issued a "narrow exception" to that rule. *Martinez*, _ U.S. _, 132 S. Ct. at 1315. Addressing Arizona criminal procedure, the Court held that, when a state like Arizona proscribes raising ineffective assistance of trial counsel claims on direct appeal, and instead reserves them only for collateral proceedings, a prisoner may establish cause before *habeas* courts for default of that claim under the following two circumstances: (1) where the state courts did not appoint counsel in the collateral proceeding for the claim of ineffective assistance of counsel at trial; or (2) where appointed counsel in the collateral proceeding was ineffective under *Strickland* standards. *Martinez*, _ U.S. _, 132 S. Ct. at 1318. The Court emphasized that its ruling would not "provide defendants a freestanding constitutional claim" requiring the appointment of counsel in collateral proceedings; instead, the Court stated its ruling was an "equitable ruling." *Martinez*, _ U.S. _, 132 S. Ct. at 1319.

¶ 49 Relying on *Martinez*, defendant here argues that his ineffective assistance of jury counsel claim raised for the first time in his successive postconviction petition should advance because

he was not appointed postconviction counsel during the first postconviction proceedings. We disagree, as this court has previously held that *Martinez* does not apply to postconviction proceedings in Illinois because: (1) *Martinez* was not a constitutionally-based decision, but rather addressed federal *habeas* law and specifically addressed Arizona criminal procedure; and (2) *Martinez* was limited to collateral proceedings which provide the *first* chance to raise a claim of ineffective assistance, but under Illinois law, unlike the Arizona law considered in *Martinez*, a defendant generally may raise an ineffective assistance claim on direct appeal, prior to collateral proceedings. See *Sutherland*, 2013 IL App (1st) 113072, ¶ 18-19; *People v. Miller*, 2013 IL App (1st) 111147, ¶ 41; and *People v. Jones*, 2013 IL App (1st) 113263, ¶ 30. Further, *Martinez* does not apply where defendant's underlying claim of ineffectiveness of counsel is not a substantial one, meaning one that has merit. *Sutherland*, 2013 IL App (1st) 113072, ¶ 20; *Miller*, 2013 IL App (1st) 111147, ¶ 41. Each reason alone is sufficient to preclude application of *Martinez*.

¶ 50 The present case is not a *habeas* proceeding and, therefore, *Martinez* does not apply here. See *Miller*, 2013 IL App (1st) 111147, ¶ 41; *Sutherland*, 2013 IL App (1st) 113072, ¶ 18; and *Jones*, 2013 IL App (1st) 113263, ¶30. We need not address the parties' arguments regarding the other reasons given in *Miller*, *Sutherland* and *Jones* for precluding application of *Martinez*, as we have already found that *Martinez* does not apply because this is not a *habeas* proceeding.

¶ 51 Finally, defendant contends we should reverse the denial of his motion for leave to file a successive postconviction petition because the postconviction court denied his motion without conducting the cause-and-prejudice analysis. We disagree. Our *de novo* review is not dependent on the postconviction court's reasoning. *People v. Thompson*, 383 Ill. App. 3d 924, 929 (2008). As discussed earlier in this order, our review indicates that defendant failed to establish cause for

not raising his ineffective assistance of jury counsel claim in his first postconviction petition; accordingly, defendant failed to satisfy the cause-and-prejudice test and, therefore, we affirm the denial of his motion for leave to file a successive postconviction petition.

¶ 52 For the foregoing reasons, we affirm the circuit court. As a result of our disposition of this case, we need not address the other arguments on appeal, including whether defendant satisfied the "prejudice" element of the cause-and-prejudice test.

¶ 53 Affirmed.