THIRD DIVISION
October 14, 2015

No. 1-14-1764

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. 07 CR 8746
	)	
CARLOS BELTRAN,	)	Honorable
	)	Garritt E. Howard,
Defendant-Appellant.	)	Judge Presiding.

PRESIDING JUSTICE MASON delivered the judgment of the court.
Justices Lavin and Pucinski concurred in the judgment.

O R D E R

¶ 1 *Held*: Circuit court's order denying defendant's motion for leave to file a successive post-conviction petition affirmed where defendant failed to show cause for his failure to include his ineffective assistance of counsel claim in his initial post-conviction petition and where he failed to present a colorable claim of actual innocence.

¶ 2 Defendant Carlos Beltran appeals from an order of the circuit court of Cook County denying him leave to file a successive petition for relief under the Post-Conviction Hearing Act (Act) (725 ILCS 5/122-1 *et seq.* (West 2014)). He contends that he sufficiently demonstrated

cause and prejudice in relation to his ineffective assistance of counsel claim, as well as sufficiently presented a claim of actual innocence, to file his successive petition.

¶ 3 The record shows that Beltran and his co-defendant, Mila Petrov, who is not a party to this appeal, were charged with six counts of first degree murder in relation to the death of their daughter, Melanie Beltran, which occurred on March 13, 2007. On July 22, 2009, pursuant to a negotiated plea agreement, Beltran pled guilty to one count of aggravated battery of a child in exchange for a sentence of 20 years' imprisonment.

¶ 4 On that same date, Beltran signed a written plea agreement, the contents of which were read aloud at his plea hearing. The agreement reflected that Beltran and Petrov lived together and were parents of seven children, including the deceased, five-year-old Melanie, who died as a result of blunt force trauma to her head. According to the stipulated facts, Melanie suffered numerous burns and bruises upon her body that Beltran noticed but did not seek medical care for or prevent from occurring. Beltran had to hide his belts from Petrov because he had seen her hit Melanie on the back with one and he did not want her to continue doing so. Additionally, Beltran attempted to treat Melanie himself after she was badly burned with scalding hot water in the bathtub. He also observed Melanie's skin peeling over time due to the burns and observed new bruises about Melanie's face and eyes. The agreement also stated as follows:

> "That Carlos admits that he knew that Melanie was being continuously injured while in the care and custody of Mila in the apartment; that Carlos failed to take adequate measures to protect Melanie from being injured and abused; that he refused to believe that Mila was causing the injuries and that he was afraid that Mila would leave him and he wanted to keep the family together;

> That the defendant, Carlos Beltran, in exchange for a plea to aggravated battery to a child, has agreed to testify truthfully against the co-defendant, Mila Petrov; that the People of the State of Illinois will recommend a sentence of 20 years, Illinois Department of Corrections, to be served at 85 percent in exchange for his truthful testimony; that the defendant Carlos Beltran's testimony would not be limited to the contents of this plea agreement if he were to testify in rebuttal during the trial of the co-defendant, Mila Petrov."

¶ 5 In addition to the plea agreement, a medical examiner's report was admitted into evidence, which showed that Melanie died from blunt trauma to the head. Beltran's attorney then stipulated that the plea agreement as read aloud was accurate and that its contents reflected what would be the testimony in this case. Thereafter, the trial court questioned Beltran, who acknowledged that the contents of the plea agreement that had been read aloud were accurate and that it was his signature that appeared on the written document. The court then sentenced Beltran to a 20-year term of imprisonment, as well as admonished him regarding his appellate rights. Beltran did not file a motion to withdraw his guilty plea or file a direct appeal from the judgment entered on his plea conviction.

¶ 6 On April 19, 2011, Beltran filed a *pro se* postconviction petition in which he alleged that his constitutional rights were violated in that trial counsel was ineffective for failing to file a motion to withdraw his guilty plea, failing to file a motion to reconsider sentence, and failing to file a direct appeal. Beltran asserted that he "wanted to appeal, but counsel decided not to file one." On May 13, 2011, the circuit court summarily dismissed the petition, finding that it was frivolous and patently without merit. On appeal, this court affirmed that dismissal, finding that

Beltran failed to (i) attach an affidavit supporting the allegations contained in his petition, and (ii) allege that he affirmatively informed his counsel of his desire to appeal and challenge his sentence. *People v. Beltran*, 2013 IL App (1st) 111864-U, ¶¶ 1, 14.

¶ 7 On April 8, 2014, through privately retained counsel, Beltran filed a motion for leave to file a successive postconviction petition, wherein he argued that his appointed counsel was ineffective for (1) failing to investigate his mental health issues, and (2) failing to pursue an actual innocence claim. In relation to his mental health argument, Beltran alleged that he was taking the psychotropic medications Zoloft and Trazodone at the time of his prosecution in this case, and that his counsel knew or should have known about this. Beltran further alleged that counsel failed to conduct an investigation, thereby ignoring the existence of significant mental health issues which could have impacted his fitness to stand trial, to plead, or allocute in mitigation. According to Beltran, he was "in such a mental state" that at his bond hearing, the preliminary court ordered that a mental health examination be conducted, but that such an examination was never accomplished or considered by the trial court or appointed counsel at the time of his guilty plea. Beltran thus argued that his guilty plea was involuntary and unknowing because his mental issues, which were evident from the record, were not investigated or considered by appointed counsel or the sentencing judge.

¶ 8 In relation to his second argument, Beltran contended that he was actually innocent of the charge of which he was convicted because he was not responsible for Melanie's injuries and was never present when they occurred. Beltran argued that the discovery in this case, and in particular Petrov's recorded statement, reflects that at no time did Petrov inculpate him in her crimes against Melanie. In support of this argument, Beltran attached a police department

supplementary report dated April 11, 2007. The report reflects, *inter alia*, that on March 15, 2007, Petrov told police that she had been beating Melanie, that she did not feed Melanie every day, that she tied up Melanie every day when she took her other children to school, and that she sometimes left Melanie tied up in a closet or would hold her head in the toilet for disciplinary purposes. Petrov further told police that she had burned Melanie with hot water in the bathtub to scare her, and did not seek medical attention for her because she did not want to get into trouble.

¶ 9 Petrov further told police that at approximately 6 p.m. on the night of the incident, she forced Melanie to stand against a bedroom wall. Melanie vomited and wiped the vomit with a curtain, after which Petrov punched her in the back of the head, causing Melanie's face to strike the wall. She then took Melanie to the living room, where Petrov continued to punch her, and then threw her to the floor. After realizing that Melanie was unresponsive, Petrov called Beltran and he called the police. Petrov cleaned the apartment as she waited for paramedics to arrive.

¶ 10 Beltran also attached a police department supplementary report dated March 20, 2007. The report reflected that 10-year-old Sarah Beltran, Melanie's oldest sibling, told police, *inter alia*, that Melanie was the only one of her siblings who Petrov hit, that she and her siblings would also hit Melanie, and that Melanie was so wild that Petrov would tie her up with a belt and rope. Sarah stated that on the day Melanie died, she saw Petrov punch Melanie twice in the stomach. Because Melanie was screaming, Sarah jumped on her and hit her once in the stomach. Melanie would not "wake up" and Petrov told Sarah, "the reason Melanie died was because you jumped on her," and "when the police come here just tell them what you did." Petrov told the other children to clean up the house because the police were coming. Sarah told police that she

was sorry and did not mean to kill Melanie. The report reflects that police explained to Sarah that the injuries to Melanie were very serious and she probably was not the one who caused them.

¶ 11 Beltran also attached an affidavit in which he averred that he is innocent of the crime for which he was convicted and that he "was never present nor witnessed [his] daughter being injured by [] Petrov." Beltran further averred that his appointed counsel never discussed possible defenses or trial issues with him during his representation, and that although counsel was aware that he was taking Zoloft and Trazodone during the course of the proceedings in this case, never discussed it with him. Beltran further averred that he was never examined for any mental health issues by any professional while he was incarcerated.

¶ 12 On May 9, 2014, the circuit court denied Beltran's motion for leave to file a successive postconviction petition. The court found, *inter alia*, that the arguments Beltran raised therein could have been raised in his initial *pro se* postconviction petition. On appeal, Beltran contends that the circuit court erred in denying him leave to file a successive postconviction petition because he sufficiently demonstrated cause and prejudice in relation to his mental health claim as well as presented a colorable claim of actual innocence.

¶ 13 We review *de novo* the denial of leave to file a successive postconviction petition. *People v. Gillespie*, 407 Ill. App. 3d 113, 124 (2010). Accordingly, we may affirm on any basis supported by the record, as we review the judgment, not the circuit court's reasoning. *People v. Anderson*, 401 Ill. App. 3d 134, 138 (2010).

¶ 14 In general, the Act contemplates the filing of only one petition (*People v. Guerrero*, 2012 IL 112020, ¶ 15), and expressly provides that any claim of the substantial denial of constitutional rights not raised in the original or amended petition is waived (725 ILCS 5/122-3 (West 2014)).

A defendant seeking to file a successive postconviction petition must first obtain leave of court, which, generally, may be granted where defendant demonstrates cause for his failure to bring the claim in his initial postconviction petition and prejudice as a result of that failure. 725 ILCS 5/122-1(f) (West 2014). Both elements must be met before leave to file a successive postconviction petition will be granted. *People v. Pitsonbarger*, 205 Ill. 2d 444, 464 (2002).

¶ 15 We first address Beltran's argument that he sufficiently demonstrated cause and prejudice to file his successive petition where he alleged ineffective assistance of trial counsel for failing to pursue and investigate his mental health issues. In both his motion for leave to file his successive postconviction petition, and in his brief before this court, Beltran argues that his mental health issues were evident from the record. Assuming that to be the case, it is apparent that this issue could have been raised in Beltran's initial petition. Beltran's sole explanation for his failure to do so is his argument that "ineffective assistance of counsel constitutes cause for a defendant's failure to raise an issue at a stage of proceedings for which he relied on counsel." In support of this argument, Beltran cites *People v. Mitchell*, 2012 IL App (1st) 100907. However, that premise does not apply here, given that defendant filed his initial postconviction petition *pro se*, and did not do so through counsel. Therefore, nothing prevented Beltran from including this issue in his initial petition. Thus, because Beltran has failed to show any objective factor external to the defense that impeded his ability to raise this particular argument in his initial postconviction petition, we find that he has failed to establish cause. *People v. English*, 403 Ill. App. 3d 121, 130 (2010). In turn, because we find that Beltran has failed to show cause, we need not determine whether he showed prejudice. See *People v. Smith*, 2014 IL 115946, ¶ 37 (finding that, due to defendant's failure to show prejudice, the court need not address whether he showed

cause). Accordingly, we find that the trial court did not err in denying Beltran leave to file a successive petition based on a claim of ineffective assistance of counsel. *Id.*

¶ 16 We next address Beltran's argument that he set forth a colorable claim of actual innocence.[1] Where a defendant sets forth a claim of actual innocence in a successive postconviction petition, he is excused from showing cause and prejudice. *People v. Ortiz*, 235 Ill. 2d 319, 330 (2009). In such a case "leave of court should be denied only where it is clear, from a review of the successive petition and the documentation provided *** that, as a matter of law, the petitioner cannot set forth a colorable claim of actual innocence." *People v. Edwards*, 2012 IL 111711, ¶ 24. In other words, "leave of court should be granted when the petitioner's supporting documentation raises the probability that 'it is more likely than not that no reasonable juror would have convicted him in light of the new evidence.'" *Id.*, quoting *Schlup v. Delo*, 513 U.S. 298, 327 (1995).

¶ 17 The elements of a successful claim of actual innocence are that the evidence supporting the claim be (1) newly discovered, (2) material, and not merely cumulative, and (3) "of such conclusive character that it would probably change the result on retrial." *Edwards*, 2012 IL 111711, ¶ 32, citing *Ortiz*, 235 Ill. 2d at 333. The State maintains that the evidence here does not meet any of these three elements. We agree.

¶ 18 Beltran argues that he is actually innocent of the charge at issue because he was not responsible for the injuries that Melanie sustained, nor was he present at the time they occurred.

[1] As defendant notes, the question of the applicable standard of review of a trial court's decision to deny a successive claim of actual innocence is undecided. We need not decide this issue, as we find that our determination is the same under either a *de novo* or an abuse of discretion standard. See *People v. Edwards*, 2012 IL 111711, ¶ 30; *People v. English*, 2014 IL App (1st) 102732-B, ¶¶ 37, 57.

In support thereof, he relies upon supplementary police reports which reflect that (1) Petrov admitted to repeatedly physically abusing Melanie, (2) she did not implicate Beltran in her actions, and (3) Sarah, who witnessed the abuse, also did not implicate Beltran in what transpired. These reports were dated March 20, 2007, and April 11, 2007, and Beltran does not dispute that they were tendered to him during discovery prior to his guilty plea, which took place in July 2009. Evidence that consists of facts already known to a defendant at or prior to trial does not constitute newly discovered evidence even if the source of these facts may have been unknown, unavailable or uncooperative. *People v. Jones*, 2012 IL App (1st) 093180, ¶ 60. Here, not only were these reports known to Beltran prior to the time of his guilty plea, but the facts contained therein upon which he relies – that he was not present at the time Petrov abused Melanie – were also well known to him prior to his plea. Accordingly, the evidence in question is not "newly discovered."

¶ 19 Moreover, we find that the fact that Petrov did not implicate Beltran in her actions is immaterial and would probably not change the result on retrial. A parent who knowingly fails to protect his or her child from abuse may be prosecuted under the accountability statute and, thereby, becomes legally accountable for the conduct of the abuser. *People v. Peters*, 224 Ill. App. 3d 180, 190 (1991). The accountability statute provides that the person charged must have the intent to promote or facilitate the offense at issue. *Id.*; 720 ILCS 5/5-2(c) (West 2006)). "A person who knows that his or her child is in a dangerous situation and fails to take action to protect the child, presumably intends the consequences of the inaction." *Id.* at 190-91 (finding that the defendant, who was not present at the time her boyfriend physically abused her son,

intended to facilitate the offense at issue where she knew that the abuse was occurring but did not remove her son from the abusive and dangerous environment).

¶ 20 Here, Beltran admitted that over time, he saw numerous injuries on Melanie's face and body, but did not seek medical care for those injuries. He admitted that in one instance, rather than take Melanie to the hospital, he attempted to self-treat her badly burned body. Beltran further admitted that he knew that Melanie was being continuously injured while in Petrov's care, but failed to take adequate measures to protect her from being injured and abused. Through this admission, Beltran implicated himself in the abuse of his child. It is immaterial that Petrov did not implicate Beltran in her actions because it was unnecessary for Beltran to be physically present to be held accountable for Petrov's conduct. *Id.* at 192. Because the evidence upon which Beltran relies is not newly discovered, material, or of such conclusive character that it would probably change the result on retrial, we find that he failed to set forth a colorable claim of actual innocence, and, accordingly, that the court did not err in denying him leave to file a successive claim of actual innocence.

¶ 21 For the foregoing reasons, we affirm the judgment of the circuit court of Cook County.

¶ 22 Affirmed.