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2015 IL App (3d) 130341-U

Order filed January 21, 2015

IN THE
APPELLATE COURT OF ILLINOIS
THIRD DISTRICT

A.D., 2015

THE PEOPLE OF THE STATE OF ILLINOIS,)	Appeal from the Circuit Court of the 21st Judicial Circuit, Kankakee County, Illinois,
Plaintiff-Appellee,)	
v.)	Appeal No. 3-13-0341
JOHN COLASURDO,)	Circuit Nos. 04-CF-541 and 04-JD-90
Defendant-Appellant.)	Honorable Clark Erickson, Judge, Presiding.

JUSTICE WRIGHT delivered the judgment of the court.
Presiding Justice McDade and Justice O'Brien concurred in the judgment.

ORDER

- ¶ 1 *Held:* The cause-and-prejudice test for successive postconviction petitions (see 725 ILCS 5/122-1(f) (West 2012)) does not apply to a proposed petition that attacks an allegedly void judgment, as void judgments may be attacked at any time, and such claims are not subject to waiver.
- ¶ 2 A jury found defendant, John Colasurdo, guilty of first degree murder (Ill. Rev. Stat. 1989, ch. 38, ¶ 9-1(a)(1), (2), (3)). The court sentenced him to natural life imprisonment. The judgment was affirmed on direct appeal. *People v. Colasurdo*, No. 3-08-0662 (2010) (unpublished order under Supreme Court Rule 23). Defendant filed a petition for postconviction

relief, which the court summarily dismissed. Defendant filed a motion requesting leave to file a successive petition on the grounds that his sentence was void. The court denied the motion, finding that defendant failed to establish “cause” and “prejudice.” See 725 ILCS 5/122-1(f) (West 2012). We reverse.

¶ 3

FACTS

¶ 4

When defendant was 29 years old, the State filed a petition for delinquency, alleging that defendant was a delinquent minor for committing first degree murder when he was 14 years old. That same day, the State filed a petition to permit prosecution of defendant as an adult under the criminal laws for first degree murder. The court granted the States motion to prosecute this matter in adult court after finding that defendant voluntarily waived his right to proceed under the Juvenile Court Act of 1987 (Act) (705 ILCS 405/1-1 *et seq.* (West 2004)).

¶ 5

In criminal court, the State indicted defendant on four counts of first degree murder (Ill. Rev. Stat. 1989, ch. 38, ¶ 9-1(a)(1), (2), (3)). Initially, defendant was found unfit. After the court determined defendant had been restored to fitness, by agreement of the parties, the court vacated the order allowing prosecution of defendant as an adult, based on concerns that defendant was unfit at the time he waived prosecution under the Act. The State filed a new petition to permit prosecution as an adult. After a hearing, the court granted the new petition.

¶ 6

A jury found defendant guilty on all four counts. In addition, the jury found the victim was more than 60 years old and the murder was accompanied by brutal and heinous behavior. The court sentenced defendant to a term of natural life imprisonment. The appellate court affirmed the judgment on direct appeal. *Colasurdo*, No. 3-08-0662.

¶ 7

Defendant filed a timely petition for postconviction relief under the Post-Conviction Hearing Act (725 ILCS 5/122-1 *et seq.* (2010)). Defendant argued that he should have been tried

in juvenile court. The trial court summarily dismissed the petition. Defendant did not appeal.

¶ 8 More than 17 months later, defendant filed a motion for leave to file a successive postconviction petition arguing the sentence imposed by the court was void. See 725 ILCS 5/122-1(f) (West 2012) (establishing the standard for filing successive postconviction petitions). The circuit court denied defendant's request for leave to file a successive postconviction petition because defendant failed to establish "cause" for not raising his new claims in his initial postconviction petition. Defendant appeals.

¶ 9 ANALYSIS

¶ 10 On appeal, defendant contends the trial court improperly denied his petition for leave to file a successive postconviction petition based on a void sentence. Defendant argues the trial court erroneously found waiver applied because defendant neglected to raise the sentencing issue in his first postconviction petition.

¶ 11 The case law provides that a void sentence may be attacked at any time. *People v. Hillier*, 237 Ill. 2d 539, 546 (2010). Case law further provides the cause-and-prejudice test does not apply when a petition for leave to file a successive postconviction petition alleges that the trial court's ruling is void, even when the voidness issue is raised for the first time in a successive petition. *People v. Ramey*, 393 Ill. App. 3d 661, 670 (2009). Therefore, we reverse the circuit court's decision denying defendant's motion for leave to file a successive petition and remand for further proceedings.

¶ 12 CONCLUSION

¶ 13 The judgment of the circuit court of Kankakee County is reversed and remanded.

¶ 14 Reversed and remanded.