

FIFTH DIVISION  
DECEMBER 30, 2016

No. 1-14-3243

**NOTICE:** This order was filed under Supreme Court Rule 23 and may not be cited as precedent by any party except in the limited circumstances allowed under Rule 23(e)(1).

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IN THE  
APPELLATE COURT OF ILLINOIS  
FIRST JUDICIAL DISTRICT

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THE PEOPLE OF THE STATE OF ILLINOIS,	)	Appeal from the
	)	Circuit Court of
Plaintiff-Appellee,	)	Cook County.
	)	
v.	)	No. 09 CR 1767
	)	
JOSE VALDOVINOS,	)	Honorable
	)	Stanley Sacks,
Defendant-Appellant.	)	Judge Presiding.

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PRESIDING JUSTICE GORDON delivered the judgment of the court.  
Justices Hall and Reyes concurred in the judgment.

**O R D E R**

¶ 1 *Held:* The circuit court properly denied defendant leave to file a successive petition for postconviction relief because defendant failed to meet the requirements of the cause and prejudice test when he failed to establish cause to excuse his procedural default.

¶ 2 Defendant, Jose Valdovinos, appeals from the circuit court's order denying him leave to file a successive petition for relief pursuant to the Post-Conviction Hearing Act (Act) (725 ILCS 5/122-1 *et seq.* (West 2014)). On appeal, defendant contends that the court erred when it denied him leave to file the instant petition because the petition met the requirements of the cause and prejudice test. Specifically, defendant contends that he has established cause when his first postconviction proceeding was deficient because he was not appointed counsel. Defendant further contends that he has established prejudice because he was denied the effective assistance of counsel during plea bargaining when his attorney failed to inform him of the "potential length of his sentence." We affirm.

¶ 3 Following a jury trial, defendant was found guilty of aggravated vehicular hijacking, armed robbery, and aggravated kidnapping. He was sentenced to 15 years in prison for the aggravated vehicular hijacking conviction, 15 years for the armed robbery conviction, and 20 years for the aggravated kidnapping conviction. All sentences were to be served concurrently.

¶ 4 At trial, the victim, Jose Rodriguez, testified that he was at El Plan bar on the evening of December 13, 2008, when he observed defendant, who he knew as "Pepe." Defendant was with Lazaro Perez and two other people. The victim left the bar to give a friend a ride, then returned. As the victim was exiting his parked vehicle, a red van pulled up. Defendant and Perez exited and defendant put a gun to the victim's head. Defendant hit the victim on the head with the gun, put the victim in the van and said that if the victim moved or screamed, defendant would kill the victim. When the van stopped in a garage, the victim's hands and feet were tied and his head was covered. He was then put in a closet inside a house. The closet was hot and the victim kept moving around. A tattooed individual came in with a baseball bat and hit the victim. Defendant

took the victim's keys and wallet, and demanded \$350,000. Defendant stated that if the victim did not give him the money, defendant would kill the victim. Defendant also beat the victim with a baseball bat.

¶ 5 At one point, a "young lady" and a little girl came to the house. This woman argued with defendant because "that wasn't right." The victim was then taken to a different house. There, defendant put a gun to the victim's back and took him inside the house. Inside the house were Fecundo Zamora, Phillipe Trajillo, and Luis Lara. Defendant took the victim to a bedroom. There, defendant hit the victim with a baseball bat because the victim had moved. Defendant then asked the victim for the money, but the victim stated that he did not have it. At some point defendant and the man with tattoos left. The other men remained, drinking alcohol and periodically checking on the victim. The victim was told that he would be killed the next day if he did not "come up with the money." The victim tried to break through his bindings, and, ultimately, was able to get his legs free and exit through a back door. The victim ran. He saw a woman on the street and asked her for help. The victim later learned that this woman's name was Maria Compos. The victim hid in Compos' car until the police arrived. The victim then directed the police to the house where he was held. From the back of a squad car, the victim observed the police bring out Perez, Trajillo, Zamora and Lara. These four men were arrested. The victim was then taken to a hospital. There, he told officers what had happened and about defendant, whom he knew as "Pepe."

¶ 6 Maria Compos testified that as she was backing out of her garage, a man came to the side of the vehicle and asked for help. The man's hands were tied and his face was swollen. Compos was scared. She told the man to lay down in the backseat of the car in case someone was chasing

him. She grabbed her phone. At this point, her 13-year-old daughter came outside and she asked her daughter to call 911. Compos does not speak English. She had never seen this man before, but later learned that his name was Jose Rodriguez.

¶ 7 Officer Aaron Carranza testified that he responded to a call concerning a kidnapping. When he arrived at the location, a woman who he later learned was named Maria Compos flagged him down. Carranza observed the victim in the backseat of Compos' vehicle. The victim was bound at the wrist with duct tape and had duct tape on his ankles. The victim seemed "fearful." Carranza cut the tape on the victim's wrists and notified his sergeant that he had what "appeared to be a *bona fide* kidnapping."

¶ 8 Officer John Dowling testified that he and other officers formulated a plan to gain entry into the apartment from which the victim escaped. When officers knocked on the door, a man answered it. Dowling later learned that this man's name was Lazaro Perez. Perez was detained and officers entered the apartment. Inside, three other men were detained. Dowling then brought Perez outside to the police vehicle where the victim was located. The officer inside the vehicle gave a thumbs up and Perez was taken into custody. The other three men were also shown to the victim and subsequently placed in custody. When he reentered the apartment, Dowling observed a baseball bat on the sink in the kitchen and two rolls on duct tape on the kitchen counter. Another officer recovered 11 "live 9 millimeter rounds."

¶ 9 Detective Scott Reiff testified that during a conversation, through an interpreter, with the victim at a hospital, he heard the victim say "Pepe" several times. Later, at a police station, Reiff spoke to Luis Lara. Following that conversation, Reiff had a name, Jose Valdovinos, to associate with the nickname "Pepe." He then obtained a photograph of defendant, although it was not a

current photograph. At trial, Reiff testified that defendant looked "skinnier" than he looked in the photograph. Reiff created a photographic array and showed it to the victim. The victim was not able to identify defendant. However, the victim later identified defendant in a lineup.

¶ 10 The defense presented the testimony of Maria Gutierrez, defendant's girlfriend. Maria Gutierrez testified that on the evening of December 13, 2008, she was at home. Defendant was at her home during the day and left around 7:30 or 8 p.m. Defendant returned between 11 and 11:30 p.m. and spent the night. Defendant did not leave the house on December 14, 2008.

¶ 11 Patricia Gutierrez, Maria's sister and upstairs neighbor, testified that she "heard" defendant during the day on December 13, 2008. Around 11 p.m. that night, defendant knocked on the door because he had forgotten his key. Patricia let defendant inside. She testified that defendant's nickname was "Pepe" and that this is a common nickname for a person named Jose.

¶ 12 Defendant then testified that his nickname was Pepe and that he went to El Plan bar on the evening of December 13, 2008. While he was there, he saw the victim. He left the bar before 11 p.m. and went to Maria Gutierrez's house. He denied forcing the victim into a vehicle, hitting the victim with a baseball bat or demanding \$350,000 from the victim.

¶ 13 The jury found defendant guilty of aggravated vehicular hijacking, armed robbery, and aggravated kidnapping. He was sentenced to 15 years in prison for the aggravated vehicular hijacking conviction, 15 years for the armed robbery conviction, and 20 years for the aggravated kidnapping conviction. All sentences were to be served concurrently. Defendant's convictions and sentences were affirmed on direct appeal. See *People v. Valdovinos*, 2013 IL App (1st) 103235-U.

¶ 14 In August 2013, defendant filed a *pro se* postconviction petition alleging, *inter alia*, that he was denied the effective assistance of trial counsel when counsel failed to discover evidence of his actual innocence prior to trial, and to object to evidence which implied that defendant had a criminal background. On November 14, 2013, the circuit court dismissed the petition as frivolous and patently without merit.

¶ 15 On March 20, 2014, the Office of the Clerk of the Circuit Court of Cook County sent defendant a letter stating that on January 24, 2014, the circuit court entered an order denying defendant's petition for a late notice of appeal. The letter further stated that defendant should direct his petition for a late notice of appeal to the Clerk of the Appellate Court. There is no record of such an appeal in this court's records.

¶ 16 In July 2014, defendant filed a *pro se* motion for leave to file a successive postconviction petition and the instant *pro se* successive postconviction petition. The petition alleged, *inter alia*, that defendant was denied the effective assistance of counsel because trial counsel failed to "properly advise" defendant of the possible minimum and maximum sentences that defendant could receive before defendant rejected a plea offer, and that defendant was denied due process when the trial court did not inform defendant of the minimum and maximum sentences that defendant could receive for the charged offenses. The petition further alleged that defendant was denied the effective assistance of appellate counsel because appellate counsel failed to raise these issues on direct appeal when they were "on the face of the record." The successive petition finally alleged that defendant was denied the right to appeal the dismissal of his first postconviction petition because he was in the prison's health care unit during the 30-day time period to appeal and when he filed a late notice of appeal, it was "rejected" by the trial court.

¶ 17 Attached to the petition was defendant's affidavit. Defendant averred that trial counsel did not tell him, before defendant decided to reject the State's plea offer and go to trial, that he could receive up to 25 years in prison and that he was not "aware" of the consequences of the charges. Defendant further averred that if he had known that he could be sentenced to 35 years in prison, he would have accepted the State's 12-year offer. The circuit court denied defendant leave to file the successive *pro se* postconviction petition.

¶ 18 On appeal, defendant contends that the circuit court erred when it denied him leave to file the instant *pro se* successive postconviction petition because he has met the requirements of the cause and prejudice test. Defendant argues, relying on *Martinez v. Ryan*, 566 U.S. \_\_\_, 132 S. Ct. 1309 (2012), and *Trevino v. Thaler*, 569 U.S. \_\_\_, 133 S. Ct. 1911 (2013), that he has established cause because the proceedings related to his first postconviction petition were deficient when he was not appointed counsel. As for prejudice, defendant contends that his trial counsel's failure to advise him about the potential prison term he was facing was unreasonable and led him to reject a 12-year plea offer.

¶ 19 When a defendant seeks to file a successive postconviction proceeding, he must first obtain leave of court. 725 ILCS 5/122-1(f) (West 2014); *People v. Wrice*, 2012 IL 111860, ¶ 47. Leave of court may be granted only if a defendant demonstrates "cause" for his failure to bring the claim in his initial postconviction proceeding and "prejudice" resulting therefrom. See 725 ILCS 5/122-1(f) (West 2014) (codifying the cause-and-prejudice test).

¶ 20 Cause is shown by identifying an objective factor that impeded the defendant's ability to raise a specific claim during the initial postconviction proceedings. *Wrice*, 2012 IL 111860, ¶ 48. Prejudice is shown by demonstrating that the claim not raised during the initial postconviction

proceedings so infected the trial that the resulting conviction or sentence violated due process.

*Wrice*, 2012 IL 111860, ¶ 48. The "cause-and-prejudice test for a successive petition involves a higher standard than the first-stage frivolous or patently without merit standard." *People v. Smith*, 2014 IL 115946, ¶ 35. A court should deny a defendant leave to file a successive postconviction petition "when it is clear, from a review of the successive petition and the documentation submitted by the petitioner, that the claims alleged by the petitioner fail as a matter of law or where the successive petition with supporting documentation is insufficient to justify further proceedings." *Smith*, 2014 IL 115946, ¶ 35. We review the circuit court's denial of a motion for leave to file a successive petition *de novo*. *People v. Almodovar*, 2013 IL App (1st) 101476, ¶ 59. *De novo* review means that this court performs the same analysis that a trial judge would perform. *People v. Schlosser*, 2012 IL App (1st) 092523, ¶ 12.

¶ 21 In the case at bar, defendant argues he has established cause because he was not represented by legal counsel during his first postconviction proceeding. In support, defendant cites, *inter alia*, *Martinez v. Ryan*, 566 U.S. \_\_\_, 132 S. Ct. 1309 (2012).

¶ 22 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*, 566 U.S. at \_\_\_, 132 S. Ct. at 1315-16. The Court then issued a "narrow exception" to that rule. *Martinez*, 566 U.S. at \_\_\_, 132 S. Ct. at 1315. Specifically, the Court held that when a state like Arizona does not allow ineffective assistance of trial counsel claims to be raised on direct appeal and instead reserves them only for collateral proceedings, a prisoner may establish cause before federal *habeas* courts for default of that claim under two circumstances: (1) where the state courts did not appoint counsel in the



initial-review collateral proceeding for the claim of ineffective assistance at trial; or (2) where appointed counsel in the initial-review collateral proceeding was ineffective pursuant to *Strickland v. Washington*, 466 U.S. 668 (1984). *Martinez*, 566 U.S. at \_\_\_, 132 S. Ct. at 1318.

¶ 23 Relying on *Martinez*, defendant argues in the case at bar that his successive postconviction petition should advance because he was not appointed postconviction counsel during his first postconviction proceedings.

¶ 24 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 *People v. Sutherland*, 2013 IL App (1st) 113072, ¶¶ 18-19; *People v. Miller*, 2013 IL App (1st) 111147, ¶ 41; *People v. Jones*, 2013 IL App (1st) 113263, ¶¶ 29-30. The present case is not a federal *habeas* proceeding and, therefore, *Martinez* does not apply. See *Sutherland*, 2013 IL App (1st) 113072, ¶¶ 18-19; *Miller*, 2013 IL App (1st) 111147, ¶ 41; *Jones*, 2013 IL App (1st) 113263, ¶¶ 29-30.

¶ 25 The *Sutherland* court also distinguished *Trevino v. Thaler*, 569 U.S. \_\_\_, 133 S. Ct. 1911 (2013), a later Supreme Court case that extended the *Martinez* holding to Texas where ineffective assistance claims, pursuant to Texas rules of procedure, had to be raised in postconviction proceedings. The *Sutherland* court noted that in Illinois defendants do not have a constitutional right to be represented by counsel in postconviction proceedings and that

ineffective assistance claims can be raised on direct appeal. *Sutherland*, 2013 IL App (1st) 113072, ¶¶ 18-19.

¶ 26 Because we find that *Martinez* only applies to relief in federal *habeas* court, we conclude that defendant has failed to allege any facts demonstrating cause. See *Wrice*, 2012 IL 111860, ¶ 48. Because defendant has failed to demonstrate cause for not raising the claim in his initial postconviction, the circuit court properly denied him leave to file the instant *pro se* successive postconviction petition. See 725 ILCS 5/122-1(f) (West 2014).

¶ 27 Accordingly, we affirm the judgment of the circuit court of Cook County.

¶ 28 Affirmed.