

No. 1-14-3452

**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. 94 CR 21169
	)	
REGINALD KELLEY,	)	Honorable
	)	Mary Margaret Brosnahan,
Defendant-Appellant.	)	Judge Presiding.

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JUSTICE HOFFMAN delivered the judgment of the court.  
Justice Hall concurred in the judgment.  
Justice Delort specially concurred.

**ORDER**

- ¶ 1 *Held:* The judgment of the circuit court is affirmed where the Office of the State Appellate Defender's motion to withdraw as counsel was granted and the defendant's motion to proceed *pro se* was denied.
- ¶ 2 Following a bench trial in 1996, the defendant, Reginald Kelley, was convicted of first-degree murder and attempted first-degree murder and sentenced to consecutive prison terms of 80 years and 20 years, respectively. We affirmed the defendant's convictions on direct appeal (*People v. Kelley*, 304 Ill. App. 3d 628 (1999)), and affirmed the denial of his postconviction

petition (*People v. Kelley*, 331 Ill. App. 3d 253 (2002)). Subsequently, we reversed the summary dismissal of his first successive postconviction petition. *People v. Kelley*, 1-04-1287 (2005) (unpublished order under Supreme Court Rule 23). On remand, the circuit court dismissed the defendant's petition following second-stage proceedings, and we affirmed the dismissal. *People v. Kelley*, 1-07-2152 (2009) (unpublished order under Supreme Court Rule 23). Additionally, we affirmed the denial of the defendant's motion for postconviction ballistics testing. *People v. Kelley*, 2012 IL App (1st) 092790-U.

¶ 3 On July 25, 2014, the defendant filed the instant petition for relief from judgment under section 2-1401 of the Code of Civil Procedure (735 ILCS 5/2-1401 (West 2014)), raising three claims. First, he alleged that the circuit court violated his right to due process by relying on inaccurate information during sentencing. Second, the defendant argued that his extended-term sentence for first-degree murder violated due process because it was not based on a statutory aggravating factor. Third, he asserted that consecutive sentencing was improper because the circuit court did not make a requisite finding of severe bodily injury to a victim. The circuit court dismissed the defendant's petition on September 25, 2014.

¶ 4 The Office of the State Appellate Defender represents the defendant on appeal from the dismissal of his section 2-1401 petition. Counsel has filed a motion to withdraw as appellate counsel pursuant to *Pennsylvania v. Finley*, 481 U.S. 551 (1987), supported by a memorandum of law, based on her conclusion that no issues of merit exist that warrant argument on appeal. Counsel submits that the claims the defendant raised in his section 2-1401 petition lacked merit and were procedurally defaulted or barred by *res judicata*. Additionally, counsel maintains that the circuit court dismissed the petition according to proper procedure. Copies of the

memorandum and motion were sent to the defendant, and he was advised that he might submit any points in support of his appeal.

¶ 5 The defendant filed a response in which he objects to counsel's conclusions but consents to counsel withdrawing from representation. The defendant subsequently filed a motion to proceed *pro se*, which this court ordered taken with counsel's motion to withdraw and the defendant's response.

¶ 6 As an initial matter, we deny the defendant's motion to proceed *pro se*. In *People v. Jackson*, 362 Ill. App. 3d 1196 (2006), this court denied the defendant's motion to proceed *pro se* on appeal from the dismissal of his postconviction petition for two reasons. First, we observed that "Illinois Supreme Court Rule 361(a) requires that such motions state not only 'the relief sought' but also 'the grounds therefore.'" *Id.* at 1199. The defendant's motion, however, cited no relevant authority in support of his request. *Id.* Second, because the defendant made his request after defense counsel and the State had filed their respective briefs, we found that "[a]t this point in the appellate process, judicial efficiency outweighs [the] defendant's interest in individual autonomy." *Id.* at 1200.

¶ 7 Here, as in *Jackson*, the defendant's motion to proceed *pro se* on appeal from the dismissal of his section 2-1401 petition contravenes Rule 361(a) because he states no grounds on which his motion should be granted. Rather, the motion only cites authority regarding defendants' right to proceed *pro se* at trial. See, e.g., *Faretta v. California*, 422 U.S. 806, 834 (1975). As we noted in *Jackson*, "[a] reviewing court 'is not simply a repository in which appellants may dump the burden of argument and research.'" *Jackson*, 362 Ill. App. 3d at 1999 (quoting *People v. Chatman*, 357 Ill. App. 3d 695, 703 (2005)). Additionally, the defendant filed his motion to proceed *pro se* only after defense counsel filed a memorandum of law and the

defendant filed his response. As the matter was already briefed before this court when the defendant filed his motion, we find no functional difference from *Jackson*. The defendant's motion to proceed *pro se* is, therefore, denied.

¶ 8 We have carefully reviewed the record in this case, counsel's memorandum, and the defendant's response, and we find no issue of arguable merit. Therefore, the Office of the State Appellate Defender's motion for leave to withdraw as counsel is allowed, and the judgment of the circuit court is affirmed.

¶ 9 Affirmed.

¶ 10 JUSTICE DELORT, specially concurring:

¶ 11 I agree with the majority's determinations that we should: (1) affirm the judgment below; and (2) deny defendant's motion to proceed *pro se*. I do not, however, agree with the majority's analysis regarding the motion to proceed *pro se*. The majority relies on *People v. Jackson*, 362 Ill. App. 3d 1196 (2006), to support its position that defendant's motion to proceed *pro se* on appeal was defective because it failed to state specific grounds in support of its conclusion, and because defendant filed it "only after defense counsel filed a memorandum of law and defendant filed his response." *Jackson* is inapposite because the defendant in that case did not move to proceed *pro se* until *after* his attorneys had filed briefs on his behalf. *Id.* at 1197. Here, in contrast, we are not hearing the case on the merits after full briefing, but we are instead affirming the judgment below because we find, essentially, that there are no arguments defendant's attorneys can ethically make to overturn the trial court's judgment.

¶ 12 In *Anders v. California*, 386 U.S. 738, 744 (1967), the Supreme Court established a process through which appointed counsel on a direct appeal of a criminal conviction can seek permission to withdraw from representing a client if the only arguments that could be made in

support of the appeal would be frivolous. Under *Anders*, the defendant must be given an opportunity to respond to appointed counsel's request, and the court must itself examine the record to determine if there might be grounds for reversal which counsel did not detect. *Id.*

¶ 13 We routinely characterize this process in the context of postconviction petitions as arising under *Pennsylvania v. Finley*, 481 U.S. 551 (1987). This characterization is misleading and imprecise, because *Finley* actually holds that *Anders* does not apply to petitioners in postconviction proceedings because they have no federal constitutional right to appointed counsel in those proceedings. *Id.* at 554-55. In *People v. Greer*, 212 Ill. 2d 192, 209 (2004), our state supreme court impliedly adopted the *Anders* process for postconviction proceedings filed under the Post-Conviction Hearing Act (725 ILCS 5/122-1 *et seq.*). See also *People v. Kuehner*, 2015 IL 117695, ¶ 11 (2015). The case now before us arises from the dismissal of a section 2-1401 petition (735 ILCS 5/2-1401 (West 2012)) rather than under the Post-Conviction Hearing Act. Even so, there appears to be a reason why the withdrawal process approved in *Greer* and its progeny should not apply here.

¶ 14 Defendant's reason to proceed *pro se* is obvious – he wants us to consider arguments which his counsel does not believe she can ethically make. No research or citations to legal authority are necessary to discern that fact. In his “Motion Objection [*sic*] to Appellate Counsel's *Finley* Brief” and his “Motion for Leave to Proceed *Pro Se*,” defendant has, in fact, presented his arguments for reversal in the manner provided by *Kuehner*. I would simply accept defendant's motions as constituting his response. Based on my review of these motions, the State Appellate Defender's cogent analysis, the trial judge's detailed order, and the record, I agree that we should affirm the judgment below and deny defendant's motion to proceed to *pro se*. However, I would not do so not for defendant's failure to cite authority, but simply because

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his arguments are either inapplicable, barred by relevant authority, or would not materially aid us in deciding this case.