

NOTICE
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2016 IL App (5th) 130322-U

NO. 5-13-0322

IN THE

APPELLATE COURT OF ILLINOIS

FIFTH DISTRICT

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).

THE PEOPLE OF THE STATE OF ILLINOIS,)	Appeal from the
)	Circuit Court of
Plaintiff-Appellee,)	Jackson County.
)	
v.)	Nos. 79-CF-73 & 79-CF-86
)	
CHARLES K. YOUNG,)	Honorable
)	William G. Schwartz,
Defendant-Appellant.)	Judge, presiding.

JUSTICE WELCH delivered the judgment of the court.
Justices Goldenhersh and Moore concurred in the judgment.

ORDER

¶ 1 *Held:* The circuit court's denial of the defendant's petition for leave to file a successive postconviction petition is affirmed where the State was not prohibited from providing its input at the motion stage of the successive postconviction petition proceedings and where the defendant failed to demonstrate cause and prejudice.

¶ 2 The defendant, Charles K. Young, appeals the order of the circuit court of Jackson County denying him leave to file a successive postconviction petition. For the reasons which follow, we affirm.

¶ 3 We will set forth only those facts pertinent to our disposition of the specific issues on appeal. At a 1979 jury trial, the defendant was found guilty of attempted murder, four

counts of armed robbery, rape, deviate sexual assault, and aggravated kidnapping. He was sentenced to 110 years' imprisonment. His conviction and sentence were affirmed on direct appeal. *People v. Young*, 96 Ill. App. 3d 426 (1981).

¶ 4 In December 1981, the defendant filed a *pro se* petition for postconviction relief pursuant to the Post-Conviction Hearing Act (Act) (Ill. Rev. Stat. 1981, ch. 38, ¶ 122-1 *et seq.*). Thereafter, the circuit court appointed counsel and an amended postconviction petition was filed. In September 1983, the court dismissed the defendant's amended postconviction petition on the State's motion. The dismissal was affirmed by this court. *People v. Young*, No. 5-83-0688 (1984) (unpublished order under Supreme Court Rule 23).

¶ 5 In December 1988, the defendant filed a successive postconviction petition. Thereafter, the State filed a motion to dismiss. The circuit court granted the State's motion and dismissed the defendant's successive postconviction petition. On appeal, this court reversed the order dismissing the successive petition and remanded the cause for further proceedings, holding that the circuit court failed to initially determine whether the postconviction petition was frivolous or patently without merit, as required by section 122-2.1 of the Act (Ill. Rev. Stat. 1989, ch. 38, ¶ 122-2.1), before considering the State's motion to dismiss. This court also reduced the 30-year extended-term sentence for aggravated kidnapping to 15 years, finding that the extended term was improper. *People v. Young*, No. 5-89-0107 (1990) (unpublished order under Supreme Court Rule 23). On remand, the defendant filed an amended postconviction petition, and the State filed a

motion to dismiss. The circuit court thereafter dismissed the defendant's amended successive postconviction petition. The defendant did not appeal.

¶ 6 In July 1996, the defendant filed *pro se* his third petition for postconviction relief, which was summarily dismissed by the circuit court. The dismissal was affirmed by this court. *People v. Young*, No. 5-96-0558 (1998) (unpublished order under Supreme Court Rule 23). Thereafter, in June 2000, the defendant filed *pro se* a petition for *habeas corpus* relief, arguing that his consecutive sentences were improper. The circuit court denied his petition. The defendant appealed and this court affirmed. *People v. Young*, No. 5-00-0474 (2006) (unpublished order under Supreme Court Rule 23).

¶ 7 In October 2007, the defendant filed *pro se* a pleading entitled "Motion for Relief from Judgment and Sentence under 2-1401(f)" seeking relief from the judgment pursuant to section 2-1401(f) of the Code of Civil Procedure (Code) (735 ILCS 5/2-1401(f) (West 2006)), as well as postconviction relief pursuant to the Act. The State filed a motion to dismiss. Noting that the defendant's pleading had not sought leave to file a successive postconviction petition, the circuit court elected to treat it solely as a petition for postjudgment relief under section 2-1401 and to treat the State's motion to dismiss as a motion for a summary judgment. The court granted summary judgment for the State. The defendant appealed, and this court affirmed. This court concluded that the circuit court's decision to consider the defendant's pleading solely as a section 2-1401 petition was correct, as a successive postconviction petition cannot be considered as having been filed and may not be considered on the merits until the court grants leave to file the

successive petition. *People v. Young*, No. 5-08-0280 (2009) (unpublished order under Supreme Court Rule 23).

¶ 8 On October 5, 2012, the defendant *pro se* filed the petition for leave to file a successive postconviction petition at issue in the present appeal. In the petition, the defendant alleged that his trial counsel was ineffective for failing to inform him of a plea offer from the State for a concurrent sentence of 40 years' imprisonment to resolve all of the charges against him. The defendant claimed that he learned of the plea offer in 1985 from his appointed counsel during his resentencing hearing, but his counsel told him that no case law existed that could support a claim that his trial counsel was ineffective. The defendant noted that he would have "definitely accepted" the plea offer if he had been informed about it. The defendant also alleged that his counsel at the resentencing hearing was ineffective for his failure to properly preserve the issue for review.

¶ 9 On October 22, 2012, the State filed an objection to the defendant's petition for leave to file successive petition for postconviction relief. The State argued that the defendant had shown neither the requisite cause nor prejudice for the filing of a successive petition. Specifically, the State argued that the defendant had claimed that he learned about the plea offer in 1985 and that he had failed to raise this allegation in his subsequent collateral attacks on his convictions and sentence. The State argued that the defendant had failed to identify an objective factor which impeded his ability to raise this issue prior to his most recent filing.

¶ 10 On November 13, 2012, the circuit court entered an order denying the defendant's petition for leave to file a successive petition for postconviction relief. On December 3,

2012, the defendant filed a *pro se* "motion for reconsideration or in the alternative, notice of appeal." In the motion, the defendant noted that the Act does not allow the State to file any pleading at the initial stage of review in postconviction proceedings. The defendant also argued that he had met the requisite cause and prejudice test in order to file a successive postconviction petition. Specifically, he argued that his counsel on resentencing had told him that nothing could be done about his trial counsel's failure to communicate the plea offer to him because no case law supported a claim that his counsel was ineffective. He further argued that due diligence did not require that he "locate and read all unpublished opinions of federal and state courts, particularly when there is no evidence that the prison library even possessed copies of opinions which would be helpful for his cause." On June 27, 2013, the court denied the defendant's motion to reconsider. The defendant appeals.

¶ 11 Section 122-1(f) of the Act requires a petitioner to obtain leave of court before filing a successive postconviction petition. 725 ILCS 5/122-1(f) (West 2012). Leave of court may only be granted if the petitioner demonstrates cause for his failure to bring the claim in his initial postconviction proceedings and prejudice results from the failure to bring the claim. 725 ILCS 5/122-1(f) (West 2012). A successive postconviction petition will not be considered filed, and further proceedings will not follow, until the petitioner has obtained leave of court. *People v. Crenshaw*, 2015 IL App (4th) 131035, ¶ 28.

¶ 12 The defendant argues that the State should not be allowed to have any input when a *pro se* petitioner seeks leave to file a successive postconviction petition. Instead, the

defendant argues that the State may only file a motion to dismiss after leave to file the successive petition has been granted and counsel has been appointed.

¶ 13 In support of this argument, the defendant notes that during the first stage of the postconviction proceedings, *i.e.*, where the circuit court determines whether the postconviction petition is frivolous or patently without merit, the Act does not permit any motions or responsive pleadings from the State. See *People v. Gaultney*, 174 Ill. 2d 410, 419 (1996) (the court held that the State's filing of a motion to dismiss at the first stage of the postconviction proceedings was premature and improper under the Act). In *Gaultney*, our supreme court concluded that the premature filing of a motion to dismiss did not prevent the circuit court from making an independent evaluation as to whether the petition was frivolous or patently without merit, but that reversal was required where the record established that the court sought or relied on input from the State when making this determination. *Id.*

¶ 14 Citing *Gaultney*, the defendant argues that these first-stage prohibitions apply to the leave-of-court motion stage for successive postconviction petitions. The defendant also argues that unlike *Gaultney*, the circuit court relied on the State's objection when denying him leave to file his successive petition. Specifically, the defendant points out that the court's November 13, 2012, order referenced the fact that the State had filed the objection. Thus, the defendant argues that the reasonable inference is that the court improperly relied on the State's motion and, therefore, the circuit court's denial of leave to file the successive petition should be reversed under *Gaultney*. We disagree.

¶ 15 The issue of whether the circuit court improperly allowed input by the State when it considered defendant's motion for leave to file a successive postconviction petition was considered by the Third District in *People v. Welch*, 392 Ill. App. 3d 948, 955 (2009). The *Welch* court found no error in the State's participation at that point in the proceedings, noting that "[t]he parties have not offered, and we have not found, any authority prohibiting input from the State at this stage of postconviction proceedings." *Id.* Similarly, the Fourth District has addressed the issue of whether the State should be prohibited from providing its input at the motion stage of the postconviction proceedings where petitioner was acting *pro se*. *Crenshaw*, 2015 IL App (4th) 131035, ¶ 29. In *Crenshaw*, 2015 IL App (4th) 131035, ¶ 33, the court concluded that the State was not prohibited from providing its input at the motion stage of the postconviction proceedings. The court determined that the State's participation at the motion stage was consistent with the general principle that only one postconviction petition may be filed by a petitioner without leave of court and that defendant's attempt to impart first-stage prohibitions to the motion stage was unavailing as treating successive petitions the same as initial petitions ignored the well-settled rule that successive postconviction actions are disfavored by Illinois courts. *Id.* Furthermore, the court noted that the State had an interest in the finality of criminal litigation and that the State's input at the motion stage could offer assistance to the court in making its decision as to whether to grant leave. *Id.*

¶ 16 Here, the defendant argues that the decisions reached in *Welch* and *Crenshaw* are inconsistent with our supreme court's decision in *People v. Smith*, 2014 IL 115946, ¶ 35, as *Smith* does not suggest that the State should be permitted to have any input when a

circuit court is deciding whether to grant leave to file a successive postconviction petition. In *Smith*, defendant argued that the standard applicable to first-stage dismissals of postconviction petitions should be applied to successive petitions in determining whether a defendant has demonstrated cause and prejudice. 2014 IL 115946, ¶ 17. During the course of the discussion concerning the burden that a petitioner must meet to obtain leave of court to file a successive petition, the court stated as follows:

"leave of court to file a successive postconviction petition should be denied 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." (Emphasis added.) *Id.* ¶ 35.

However, we note that *Smith* is distinguishable from *Welch* and *Crenshaw* in that the supreme court in *Smith* did not address the issue of whether the State may offer its input when a defendant seeks leave to file a successive postconviction petition.

¶ 17 Moreover, the defendant argues that the legislature had intended to prohibit the State from filing any pleadings before or during the first stage of the postconviction proceedings, noting that the 98th General Assembly's proposed amendment to section 122-1(f) of the Act provided that the determination as to whether to grant leave of court shall be made without pleadings from the State (98th Ill. Gen. Assem., House Bill 2961, 2013 Sess.). The defendant acknowledged that this was "proposed legislation" in that, after passing the House, it proceeded to the Senate, where it was rereferred to committee, and then ended in the House *sine die*. The defendant argues that the proposed legislation

suggests that the legislature had not intended to permit the State to file any pleadings before or during the first stage of the postconviction proceedings. We are not persuaded by the defendant's argument.

¶ 18 This exact argument was addressed and rejected in *Crenshaw*, which stated as follows:

"[T]he legislature's 'proposed intent' is not the law, and we will not attempt to predict the future intent of the General Assembly from the scraps on the cutting room floor. Until such time as our supreme court or the legislature says otherwise, we find nothing prevents the State from providing its input on a defendant's motion for leave to file a successive postconviction petition." 2015 IL App (4th) 131035, ¶ 35.

Accordingly, like the Third and Fourth Districts, we conclude that the State was not prohibited from providing its input at the motion stage of the defendant's *pro se* motion for leave to file a successive postconviction petition.

¶ 19 Although the defendant's appellate counsel does not argue on appeal that he has satisfied the cause and prejudice test, as counsel argues that the procedural issue must be decided first, we have to consider this issue in order to determine whether the trial court's denial of his motion for leave to file successive postconviction petition should be affirmed.

¶ 20 As previously stated, leave of court to file a successive postconviction petition may be granted only if a petitioner can demonstrate cause for his failure to bring a claim in his initial postconviction petition and prejudice results from that failure. 725 ILCS

5/122-1(f) (West 2012). In order to show cause, a petitioner must identify an objective factor that impeded his ability to raise a specific claim during his initial postconviction proceedings. *People v. Evans*, 2013 IL 113471, ¶ 10. For prejudice, a petitioner must demonstrate that the claim not raised during his initial postconviction proceedings so infected the trial that the resulting conviction or sentence violated due process. *Id.* If a petitioner fails to satisfy the requirements under section 122-1(f), a reviewing court does not reach the merits or consider whether the successive petition stated the gist of a constitutional claim. *Welch*, 392 Ill. App. 3d at 955. Both prongs of the test must be satisfied in order for a defendant to prevail on a motion for leave to file a successive petition for postconviction relief. *People v. Guerrero*, 2012 IL 112020, ¶ 15. A circuit court's denial of a motion for leave to file a successive postconviction petition is subject to *de novo* review. *Crenshaw*, 2015 IL App (4th) 131035, ¶ 38.

¶ 21 Section 122-3 of the Act (725 ILCS 5/122-3 (West 2012)) provides that any claim of substantial denial of constitutional rights not raised in the original or amended postconviction petition is considered waived. A postconviction proceeding is a collateral attack upon a prior conviction or sentence and therefore allows inquiry only into constitutional issues that were not, and could not have been, adjudicated on direct appeal. *People v. Pitsonbarger*, 205 Ill. 2d 444, 455-56 (2002).

¶ 22 Here, in his petition for leave to file a successive postconviction petition, the defendant stated that he learned in 1985 of his trial counsel's failure to properly inform him of a plea offer. He stated that he had been specifically informed that no case law existed to support any claim against counsel for the failure to advise him of the plea offer.

¶ 23 The defendant has filed numerous collateral attacks upon his conviction and sentence since 1985 and has failed to raise this argument in any of those previous proceedings. The defendant has not identified any objective factor that impeded his ability to raise the claim in any of the prior proceedings. Accordingly, we find the trial court correctly denied the defendant leave to file his successive postconviction petition because he did not meet the requirements of section 122-1(f). 725 ILCS 5/122-1(f) (West 2012).

¶ 24 For the foregoing reasons, we affirm the judgment of the circuit court of Jackson County denying defendant leave to file a successive postconviction petition.

¶ 25 Affirmed.