

NOTICE
Decision filed 03/04/19. The text of this decision may be changed or corrected prior to the filing of a Petition for Rehearing or the disposition of the same.

2019 IL App (5th) 150341-U

NO. 5-15-0341

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,)	St. Clair County.
)	
v.)	No. 05-CF-1116
)	
REEDIE BEAN,)	Honorable
)	John Baricevic,
Defendant-Appellant.)	Judge, presiding.

JUSTICE BARBERIS delivered the judgment of the court.
Justices Welch and Chapman concurred in the judgment.

ORDER

¶ 1 *Held:* The circuit court properly denied the defendant's petition for leave to file a second postconviction petition.

¶ 2 The defendant, Reddie Bean, appeals the circuit court's denial of his postconviction petition. The Office of the State Appellate Defender (OSAD) was appointed to represent the defendant. OSAD filed a motion to withdraw as counsel, alleging that there is no merit to the appeal. See *Pennsylvania v. Finley*, 481 U.S. 551 (1987); *People v. McKenney*, 255 Ill. App. 3d 644 (1994). The defendant was given proper notice and granted an extension of time to file briefs, objections, or any other document supporting his appeal. The defendant filed a response. We considered OSAD's

motion to withdraw as counsel on appeal and the defendant's response. We examined the entire record on appeal and found no error or potential grounds for appeal. For the following reasons, we grant OSAD's motion to withdraw as counsel on appeal and affirm the judgment of the circuit court of St. Clair County.

¶ 3

BACKGROUND

¶ 4 The day after the defendant's cousin was killed, he left the house with a gun given to him by his mother. He confronted a teenage boy who he believed was involved in the shooting of his cousin. He made the boy turn around and walk. While the boy's arms were in the air, the defendant shot him three times—killing him. There were multiple witnesses to the shooting. This was the factual basis of the defendant's guilty plea to first-degree murder.

¶ 5 At his arraignment the defendant was not advised that he would be subject to a term of mandatory supervised release (MSR) if convicted. At the plea hearing, the circuit court told the defendant that if convicted of first-degree murder his sentence would include a term of MSR but not that a term of MSR was required for a guilty plea. At the sentencing hearing, the court did not indicate that the defendant would be required to serve a term of MSR. Likewise, the mittimus did not indicate that the defendant would be required to serve a term of MSR.

¶ 6 The defendant did not file a direct appeal, but he did file a postconviction petition that was denied.

¶ 7 Later, the defendant filed a motion seeking leave to file a second postconviction petition. In that motion the defendant claimed that he was not properly admonished at the plea hearing that he would be required to serve a term of MSR.

¶ 8 The circuit court denied the defendant's request to file a second postconviction petition. The defendant now appeals.

¶ 9 ANALYSIS

¶ 10 The Post-Conviction Hearing Act (Act) (725 ILCS 5/122-1 *et seq.* (West 2012)) allows a person convicted of a crime to "assert that their convictions were the result of a substantial denial of their rights under the United States Constitution or the Illinois Constitution." *People v. Coleman*, 183 Ill. 2d 366, 379 (1998). Evidence of the claim must be attached to the petition in the form of "affidavits, records, or other evidence supporting its allegations or shall state why the same are not attached." 725 ILCS 5/122-2 (West 2012).

¶ 11 The Act only allows a defendant to file one postconviction petition without leave of court. *Id.* § 122-1(f). A court may only grant leave for a petitioner to file a successive petition when the petitioner shows cause and prejudice. *Id.*

"[A] prisoner shows cause by identifying an objective factor that impeded his or her ability to raise a specific claim during his or her initial post-conviction proceedings; *** a prisoner shows prejudice by demonstrating that the claim not raised during his or her initial post-conviction proceedings so infected the trial that the resulting conviction or sentence violated due process." *Id.*

"Any claim of substantial denial of constitutional rights not raised in the original or an amended petition is waived." *Id.* § 122-3. The quantum of proof required to show cause and prejudice is greater than that required at the first stage of the proceedings. *People v. Smith*, 2014 IL 115946, ¶ 35.

"[L]eave 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." *Id.* (citing *People v. Pitsonbarger*, 205 Ill. 2d 444, 463 (2002)).

¶ 12 The defendant's exact claim of cause—that he could not raise this issue in his first postconviction petition because he did not know about the MSR requirement—has been before the Illinois Supreme Court in *People v. Evans*, 2013 IL 113471. There, the defendant argued that he could not have raised the issue of not having been made aware of a term of MSR in his original postconviction petition because he did not know about the requirement when he filed his first postconviction petition. *Id.* ¶ 13. The *Evans* court stated that ignorance of the law is never an excuse for failing to raise an issue and affirmed the denial of Evans's petition for leave to file a subsequent postconviction petition. *Id.*

¶ 13 Our supreme court having decided the exact issue raised in this case, the resolution here is clear. The defendant cannot claim ignorance of the law was the objective cause that prevented him from raising the improper admonishment in his original

postconviction petition. The defendant has not shown an objective reason for failing to raise the issue of incomplete admonitions that did not include MSR in his first petition.

¶ 14

CONCLUSION

¶ 15 Ignorance of the law cannot excuse failure to raise an issue in a first postconviction petition. Therefore, we grant OSAD's motion to withdraw and affirm the decision of the circuit court of St. Clair County.

¶ 16 Motion granted; judgment affirmed.