

No. 1-13-3562

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).

IN THE
APPELLATE COURT OF ILLINOIS
FIRST JUDICIAL DISTRICT

THE PEOPLE OF THE STATE OF ILLINOIS,)	Appeal from the
)	Circuit Court of
Plaintiff-Appellee,)	Cook County.
)	
v.)	No. 83 CR 11071
)	
PAUL CHATMAN,)	Honorable
)	Matthew E. Coghlan,
Defendant-Appellant.)	Judge Presiding.

JUSTICE McBRIDE delivered the judgment of the court.
Presiding Justice Palmer and Justice Gordon concurred in the judgment.

ORDER

¶ 1 *Held:* The trial court properly denied defendant leave to file his *pro se* successive postconviction petition because his sentencing claims were barred by *res judicata*, he failed to satisfy the cause and prejudice test for his claims relating to his childhood sexual abuse, and he forfeited his claim of ineffective assistance of trial counsel by failing to raise the claim in his petition.

¶ 2 Defendant Paul Chatman, *pro se*, appeals the trial court's dismissal of his successive postconviction petition. On appeal, defendant argues that the trial court erred in denying him leave to file his successive postconviction petition because he satisfied the cause and prejudice test required for leave to be granted.

¶ 3 Following a bench trial, defendant was convicted of first degree murder, armed violence, and armed robbery in the 1983 death of Vera Kibby and sentenced to concurrent terms of 75 years for murder and 40 years for armed robbery. The trial court merged the armed violence conviction into the murder conviction. The evidence at trial showed that defendant struck 66-year-old Kibby, a friend of his mother's, in the head with a baseball bat and then stole her purse and car. Defendant raised an insanity defense at trial, but the trial court rejected that defense in finding defendant guilty. A detailed discussion of defendant's trial can be found in his direct appeal. *People v. Chatman*, 145 Ill. App. 3d 648 (1986). On direct appeal, the reviewing court affirmed his conviction and extended term sentence, but reduced his sentence for armed robbery to 30 years. *Chatman*, 145 Ill. App. 3d at 662.

¶ 4 Defendant has filed several petitions seeking different forms of postconviction relief. In November 1994, defendant filed a petition for writ of *habeas corpus* in the United States District Court for the Northern District of Illinois, which was dismissed. *Chatman v. Page*, 868 F. Supp. 1036 (N.D. Ill. 1994).

¶ 5 In October 2000, defendant filed a petition for relief from judgment pursuant to section 2-1401 of the Code of Civil Procedure (735 ILCS 2/1401 (West 2000)), challenging his sentence under *Apprendi v. New Jersey*, 530 U.S. 466 (2000). The trial court dismissed the petition as untimely, which was affirmed on appeal. *People v. Chatman*, No. 1-01-0373 (January 22, 2002) (unpublished order pursuant to Supreme Court Rule 23).

¶ 6 In February 2004, defendant filed a *pro se* "amalgamated petition for collateral relief," pursuant to section 2-1401 of the Code of Civil Procedure (735 ILCS 5/2-1401 (West 2004)) and the Post-Conviction Hearing Act (the Act) (725 ILCS 5/122-1 *et seq.* (West 2004)). The petition was supplemented by appointed counsel. The State moved to dismiss the petition. The trial

court granted the State's motion, finding that defendant's petition was untimely and claims were barred by *res judicata*. On appeal, the appellate defender sought to withdraw as counsel pursuant to *Pennsylvania v. Finley*, 481 U.S. 551 (1987). The reviewing court granted the *Finley* motion, denied defendant's request for the appointment of new counsel and affirmed the trial court's dismissal order. *People v. Chatman*, No. 1-06-1555 (August 3, 2007) (unpublished order pursuant to Supreme Court Rule 23).

¶ 7 In May 2008, defendant filed the instant *pro se* successive postconviction petition. In his petition, defendant argued that every attorney who represented him was ineffective, the trial court failed to consider his rehabilitative potential at sentencing, and his extended-term sentence is void under *Apprendi*. The petition fell off the court call for a few months. In August 2009, defendant filed a *pro se* motion for leave to file successive petition for postconviction relief. In his motion, defendant stated that he had newly discovered evidence that he had been sexually abused as a baby and this evidence was vital to his affirmative defense of insanity and mental illness at trial. The trial court acknowledged the filing of the motion for leave to file successive postconviction petition at status hearings in August and September 2009. At the December 2009 status hearing, the trial court ruled that it would treat defendant's successive petition "as if the matter had been docketed." In March 2010, the State filed a motion to dismiss defendant's petition, which the trial court granted in November 2010.

¶ 8 Defendant appealed the dismissal. This court reversed the dismissal and remanded for the trial court to consider defendant's successive postconviction petition under the proper provisions of the Act because the trial court had never granted defendant leave to file his successive petition. See *People v. Chatman*, 2012 IL App (1st) 103678-U.

¶ 9 In October 2013, the trial court on remand held that defendant failed to satisfy the cause and prejudice test under the Act and denied leave to file the successive petition. The court found that all of defendant's claims "are procedurally barred and may be dismissed on this ground alone." The court specifically found that defendant's claims that his sentence violated *Apprendi* and that the trial court did not consider mitigating evidence, including rehabilitation and his age, were barred by *res judicata*. The remaining claims were matters of trial record and were waived because they could have been raised on direct appeal.

¶ 10 This appeal followed.

¶ 11 The Illinois Post-Conviction Hearing Act (Post-Conviction Act) (725 ILCS 5/122-1 through 122-8 (West 2020)) provides a tool by which those under criminal sentence in this state can assert that their convictions were the result of a substantial denial of their rights under the United States Constitution or the Illinois Constitution or both. 725 ILCS 5/122-1(a) (West 2010); *People v. Coleman*, 183 Ill. 2d 366, 378-79 (1998). Postconviction relief is limited to constitutional deprivations that occurred at the original trial. *Coleman*, 183 Ill. 2d at 380. "A proceeding brought under the [Post-Conviction Act] is not an appeal of a defendant's underlying judgment. Rather, it is a collateral attack on the judgment." *People v. Evans*, 186 Ill. 2d 83, 89 (1999).

¶ 12 However, the Post-Conviction Act only contemplates the filing of one postconviction petition with limited exceptions. 725 ILCS 5/122-1(f) (West 2010); see also *People v. Pitsonbarger*, 205 Ill. 2d 444, 456 (2002). Under section 122-1(f), a defendant must satisfy the cause and prejudice test in order to be granted leave to file a successive postconviction petition. 725 ILCS 5/122-1(f) (West 2010).

“For purposes of this subsection (f): (1) 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; and (2) 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.” 725 ILCS 5/122-1(f) (West 2010).

¶ 13 Both elements of the cause and prejudice test must be satisfied to prevail. *Pitsonbarger*, 205 Ill. 2d at 464. “In the context of a successive post-conviction petition, however, the procedural bar of waiver is not merely a principle of judicial administration; it is an express requirement of the statute.” *Pitsonbarger*, 205 Ill. 2d at 458 (citing 725 ILCS 5/122-3 (West 1996)). The supreme court in *Pitsonbarger* also recognized an exception for a fundamental miscarriage of justice. *Id.* at 459; see also *People v. Edwards*, 2012 IL 11711, at ¶23. “To demonstrate such a miscarriage of justice, a petitioner must show actual innocence or, in the context of the death penalty, he must show that but for the claimed constitutional error he would not have been found eligible for the death penalty.” *Id.* We review the dismissal of a postconviction petition without an evidentiary hearing de novo. *Id.* at 456.

¶ 14 “Where, as here, the death penalty is not involved and the defendant makes no claim of actual innocence, Illinois law prohibits the defendant from raising an issue in a successive postconviction petition unless the defendant can establish a legally cognizable cause for his or her failure to raise that issue in an earlier proceeding and actual prejudice would result if defendant were denied consideration of the claimed error.” *People v. Brown*, 225 Ill. 2d 188, 206 (2007) (citing *Pitsonbarger*, 205 Ill. 2d at 459-60). “A defendant must establish cause and

prejudice as to each individual claim asserted in a successive postconviction petition to escape dismissal under *res judicata* and waiver." *People v. Guiterrez*, 2011 IL App (1st) 093499, at ¶12.

¶ 15 In his *pro se* successive postconviction petition, defendant raised three claims: his attorneys at every stage of his proceedings were ineffective, his sentence violated *Apprendi*, and the trial court improperly imposed an extended term sentence without considering his rehabilitative potential and other mitigating evidence. In his *pro se* motion for leave to file his successive petition, defendant presented an additional claim of newly discovered evidence regarding his childhood sexual abuse contributing to his insanity. Defendant has failed to satisfy the cause and prejudice test for any of his claims for the reasons that follow.

¶ 16 We first observe that defendant's claims regarding his sentence have been previously raised and considered by the reviewing court and are therefore barred under the doctrine of *res judicata*. In his direct appeal, defendant argued that his 75-year extended term sentence was inappropriate. The reviewing court found

"no support in the record for defendant's assertion that the court did not consider factors in mitigation or defendant's rehabilitative potential. The requirement that the trial judge set forth his reasons in the record for the particular sentence imposed does not obligate the judge to recite and assign a value to each factor presented in evidence at the sentencing hearing. *People v. Meeks*, 81 Ill.2d 524, 534 (1980). The court, in imposing sentence, specifically acknowledged that it had considered the argument presented in mitigation and defendant's expression of remorse. In our judgment

the trial court did not abuse its discretion in imposing an extended-term sentence on defendant for murder. None of the cases cited by defendant dictates a contrary result." *Chatman*, 145 Ill. App. 3d at 662 (1986).

¶ 17 Since the reviewing court on direct appeal previously considered and rejected the same argument advanced by defendant that the trial court failed to consider mitigating evidence, including his rehabilitative potential, this claim lacks merit.

¶ 18 Additionally, defendant argues on appeal that his 75-year extended term sentence is unconstitutional because it is disproportionate under the Illinois constitution. Without citing any case law, defendant appears to assert that section 5-5-3.2(b)(4)(ii) of the Code of Corrections, which allowed for the imposition of an extended term sentence when the victim was 60 years of age or older (now codified at 730 ILCS 5/5-3.2(b)(3)(ii) (West 2012)) violates the proportionate penalties clause because it carried a more severe penalty than section 5-8-1(a)(1)(a), which set forth the sentencing range for first degree murder (now codified at 730 ILCS 5/5-4.5-20(a) (West 2012)).

¶ 19 However, the Illinois Supreme Court has held that a defendant may raise two types of proportionate penalties challenges: (1) a penalty violates the proportionate penalties clause if it is cruel, degrading, or so wholly disproportionate to the offense committed as to shock the moral sense of the community; or (2) the proportionate penalties clause is violated where offenses with identical elements are given different sentences. *People v. Sharpe*, 216 Ill. 2d 481, 521 (2005). Defendant has not offered any argument under either prong for a proportionate penalties challenge. Here, defendant has compared his extended term sentence based on the victim's age

with a general first degree murder sentence. This is not a proper proportionate penalties challenge. Therefore, his claim must fail.

¶ 20 The same conclusion is true of defendant's claim that his sentence violates *Apprendi*. In his October 2000 section 2-1401 petition, defendant argued that his sentence was void in violation of *Apprendi*. See *Chatman*, No. 1-01-0373. The trial court dismissed his petition as untimely. On appeal, the reviewing court concluded that defendant's sentence was not void in light of *Apprendi* because *Apprendi* did not exist at the time defendant's sentence was imposed. *Id.* at 3-4.

¶ 21 Defendant contends that his previously litigated *Apprendi* claim is viable in light of the decision in *Danforth v. Minnesota*, 522 U.S. 264 (2008). "Because the State has a legitimate interest in the finality of criminal convictions, new constitutional rules of criminal procedure are generally not to be applied retroactively to cases on collateral review." *People v. Morfin*, 2012 IL App (1st) 103568, ¶ 42 (citing *People v. Sanders*, 238 Ill. 2d 391, 401 (2010)).

"The United States Supreme Court in *Teague v. Lane*, 489 U.S. 288, 307(1989), held that decisions establishing new constitutional rules of criminal procedure are not to be applied retroactively to cases pending on collateral review unless the new rule either: (1) places certain kinds of primary, private individual conduct beyond the power of the criminal-law-making authority to proscribe, or (2) requires the observance of those procedures that are implicit in the concept of ordered liberty." *People v. Davis*, 388 Ill. App. 3d 869, 878 (2009).

¶ 22 In *Danforth*, the Supreme Court clarified:

"What we are actually determining when we assess the 'retroactivity' of a new rule is not the temporal scope of a newly announced right, but whether a violation of the right that occurred prior to the announcement of the new rule will entitle a criminal defendant to the relief sought." *Danforth*, 522 U.S. 271.

¶ 23 Illinois courts have already considered and rejected whether *Danforth* set forth a new rule of law, as urged by defendant in this case.

"In *Danforth*, the Supreme Court reversed the holding of the Minnesota Supreme Court that *Teague* precluded state courts from retroactively applying the holding in *Crawford v. Washington*, 541 U.S. 36 (2004). The Supreme Court held that state courts were not required to apply the holding in *Teague* when determining whether the holding of a court of review should be applied retroactively. The Court noted that *Teague* involved an analysis of the federal *habeas corpus* statute. *Danforth*, 522 U.S. at 277-79. The Court explained:

'This interest in uniformity, however, does not outweigh the general principle that States are independent sovereigns with plenary authority to make and enforce their own laws as long as they do not infringe on federal constitutional guarantees.' *Danforth*, 522 U.S. 280."
Davis, 388 Ill. App. 3d at 878-79.

¶ 24 The *Davis* court noted that unlike the Minnesota Supreme Court, the Illinois Supreme Court never held that it was required to follow *Teague*. *Id.* at 879. The reviewing court noted that the Illinois Supreme Court has applied the *Teague* framework on multiple occasions, including in *People v. De La Paz*, 204 Ill. 2d 416 (2004), which held that *Apprendi* does not apply retroactively to cases in which the direct appeal had been exhausted prior to the issuance of *Apprendi*. *Id.* We also observe that the Illinois Supreme Court has continued to use the *Teague* framework to determine whether a new constitutional rule of criminal procedure was announced after the *Danforth* decision was released. See *Sanders*, 238 Ill. 2d at 400-01 (determining whether *People v. Strain*, 194 Ill. 2d 467 (2000) should be applied retroactively). Therefore, we conclude that *Danforth* does not change the Illinois Supreme Court's previous holding in *De La Paz* that *Apprendi* does not apply retroactively. Defendant's *Apprendi* challenge is *res judicata* and must fail.

¶ 25 Further, defendant was found guilty following a bench trial. Defendant's argument that the factors that increased his sentence, *i.e.*, the victim's age and the brutal and heinous nature of the crime, should have been submitted to a jury under *Apprendi* is without merit. Since defendant waived his right to a jury trial, his *Apprendi* claim has been forfeited. See *People v. Yancy*, 368 Ill. App. 3d 381, 388 (2005); *People v. Smith*, 337 Ill. App. 3d 175, 177 (2003).

¶ 26 Next, defendant contends that the trial court erred in dismissing his successive postconviction petition without an evidentiary hearing because at a hearing, he would have offered evidence supporting his claim of insanity based his childhood sexual abuse. However, defendant has failed to offer any evidence that his childhood sexual abuse impacted his mental health at the time of the crime. Rather, defendant admits that he did not remember the sexual abuse and was told about it by his parents in 2008. Moreover, defense counsel presented an

insanity defense at trial. Defendant was examined by two psychiatrists and received a fitness hearing prior to trial.

¶ 27 As the trial court found in its order:

"Petitioner claims that his mental illness should have been taken into consideration prior to trial. The record indicates that petitioner was afforded a full fitness hearing prior to trial and was analyzed by two psychiatrists because he raised an insanity defense at trial. Petitioner maintains, however, that these doctors did not take his childhood sexual abuse and enlarged breasts into consideration. Petitioner believes if they had, the outcome of his trial would have been different.

The record demonstrates that contrary to petitioner's claim, both doctors who testified at trial did take petitioner's large breasts into consideration. Both, however, based their opinions regarding petitioner's sanity not on any specific incident from the past but on specific psychological tests. Therefore, had they been presented with petitioner's newly discovered revelation that he was sexually abused as a child, it would not have affected the outcome either of [*sic*] their opinions regarding sanity. Consequently, this claim is without merit."

¶ 28 We agree. Defendant's claim regarding his previously undisclosed childhood sexual abuse does not satisfy the cause and prejudice test. As previously discussed, cause involves an objective factor that impeded defendant's ability to raise the claim during his initial

postconviction proceedings and the prejudice must show that the claim not raised in initial postconviction proceedings so infected his trial that the resulting conviction violates due process. 725 ILCS 5/122-1(f) (West 2010).

¶ 29 Even if the fact that defendant did not remember his sexual abuse and that his family did not disclose this information to defendant until 2008 was sufficient to establish cause under the Act, defendant cannot set forth prejudice. Defendant has not shown how the fact that he was not made aware of his prior sexual abuse infected his trial such that his conviction violates due process. Defendant has not offered any evidence that his sexual abuse impacted his sanity. As the State points out, defendant failed to provide an affidavit from a doctor or other expert indicating that his sexual abuse contributed to his psychological problems. Rather, the record indicates the opposite since psychological tests were administered to determine defendant's sanity and psychiatrists found him to be sane. Defendant has not offered any link between his childhood sexual abuse and his sanity. Further, defendant misapprehends the Act, an evidentiary hearing is not granted to enable defendant to prove cause and prejudice. It is defendant's burden to "obtain leave of court, but [defendant] also 'must submit enough in the way of documentation to allow a circuit court to make that determination.' " *People v. Edwards*, 2012 IL 111711, ¶ 24 (quoting *People v. Tidwell*, 236 Ill. 2d 150, 161 (2010)). Defendant has not done so here.

Defendant has failed to offer sufficient documentation to set forth that his recent discovery of childhood sexual abuse affected his sanity such that it infected his trial. Since defendant has not satisfied the cause and prejudice test, the trial court properly dismissed this claim.

¶ 30 Finally, defendant asserts that his trial counsel was ineffective for failing to present an affirmative defense of insanity or in the alternative, a plea of guilty but mentally ill. However, defendant offers no argument on how this ineffectiveness claim satisfies the cause and prejudice

test. Moreover, in his successive petition, defendant presented a different claim, that all of his attorneys at all stages of his proceedings have been ineffective for failing to raise the other claims in his petition, nor was this claim raised in his motion for leave to file his successive petition. He never raised the specific claim that his trial counsel was ineffective for failing to raise the affirmative defense of insanity or in the alternative, a plea of guilty but mentally ill. Defendant specifically noted that the discovery of his childhood sexual abuse was newly discovered evidence which was not known by himself, his attorney or the prosecutor. We also point out that trial counsel presented an insanity defense at trial, which the trial court as the trier of fact rejected. The supreme court has consistently held that any issue not raised in an original or amended postconviction petition is forfeited and cannot be raised for the first time on appeal. See *People v. Pendleton*, 223 Ill. 2d 458, 475 (2006); *People v. Jones*, 213 Ill. 2d 498, 505 (2004); *People v. Davis*, 156 Ill. 2d 149, 158-60 (1993). Since defendant did not raise this claim of ineffective assistance of trial counsel in his successive postconviction petition, it has been forfeited on appeal.

¶ 31 Additionally, the State's motion to compel defendant to file a complete brief taken with the case is not considered because defendant's subsequent motion to supplement missing pages of his brief rendered this motion moot.

¶ 32 Based on the foregoing reasons, we affirm the decision of the circuit court of Cook County.

¶ 33 Affirmed.