2011 Il App (1st) 101244-U

FIRST DIVISION
FILED: December 12, 2011

No. 1-10-1244

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. 97 CR 28658
	)	
JAMILAH TAYLOR,	)	The Honorable
	)	Clayton J. Crane,
Defendant-Appellant.	)	Judge Presiding.

PRESIDING JUSTICE HOFFMAN delivered the judgment of the court.
Justices Hall and Karnezis concurred in the judgment.

O R D E R

¶ *1* *HELD:* The trial court properly denied defendant leave to file a successive *pro se* postconviction petition where defendant did not establish the prejudice prong of the cause-and-prejudice test.

¶ 2 Defendant Jamilah Taylor appeals from the trial court's denial of leave to file a successive *pro se* petition under the Post-Conviction Hearing Act (Act) (725 ILCS 5/122-1 *et seq*. (West 2008)). On appeal, defendant contends that he was denied due process where the trial court failed to inform him that he would be required to serve three years of mandatory

supervised release (MSR) upon the completion of his agreed-to prison sentence, and, consequently, his sentence must be reduced by three years. In the alternative, defendant contends that he satisfied the cause-and-prejudice test and stated an arguable claim that he was denied due process where the trial court failed to admonish him regarding the term of MSR he must serve upon his release from prison. We affirm.

¶ 3 In 1998, defendant entered a negotiated plea of guilty to first degree murder in exchange for a 40-year prison term. Defendant then filed a timely *pro se* motion to withdraw his plea which the trial court denied after a hearing. On appeal, this court affirmed that judgment while also granting the State Appellate Defender's motion to withdraw filed pursuant to *Anders v. California*, 386 U.S. 738 (1967). See *People v. Taylor*, No. 1-99-0824 (2000) (Unpublished order under Supreme Court Rule 23).

¶ 4 The record indicates that in March 2000 defendant filed a *pro se* petition for relief from judgment pursuant to section 2-1401 of the Code of Civil Procedure (the Code) (735 ILCS 5/2-1401 (West 2000)), alleging in pertinent part that the trial court lacked jurisdiction to impose the 40-year sentence and that his constitutional rights were violated by the sentence. He then filed a *pro se* supplemental petition for relief from judgment or in the alternative for postconviction relief alleging that he was denied effective assistance of counsel. As the petitions raised constitutional issues, the trial court treated them as postconviction petitions and summarily dismissed the petitions as frivolous and patently without merit. There is no indication in the record that defendant filed an appeal.

¶ 5 In March 2008, defendant filed a second *pro se* petition for relief from judgment alleging that the addition of MSR to his prison sentence would result in a more onerous sentence than the

one which he was promised when he made his plea. He also filed a *pro se* postconviction petition alleging that he was not given the "full benefit" of his plea agreement. Defendant later filed a *pro se* motion to consolidate the petitions and to proceed under the Act.

¶ 6 The trial court appointed counsel. Appointed counsel then filed a certificate pursuant to Rule 651(c) (eff. Dec. 1, 1984), stating that based upon his consultation with defendant and review of the record, he would not be filing an amended petition. The State then filed a motion to dismiss.[1] Ultimately, the trial court denied defendant leave to file the instant *pro se* successive postconviction petition. It is from this judgment that defendant appeals.

¶ 7 On appeal, defendant contends that his sentence must be reduced by three years because the trial court failed to inform him that he was required to serve a three-year term of MSR upon his release from prison. In the alternative, defendant requests that he be permitted to file his successive postconviction petition because the basis for his MSR claim was not available to him at the time of his plea in 1998 or when he filed his first postconviction petition in 2000. He highlights that *People v. Whitfield*, 217 Ill. 2d 177 (2005), upon which he bases his claim, was not decided until 2005.

¶ 8 The Act contemplates the filing of only one postconviction petition and a defendant must obtain leave of court before filing a successive postconviction petition. See 725 ILCS 5/122-1 (f) (West 2008) (only "one petition may be filed *** without leave of the court"). Leave to file a

[1] Although the State's motion to dismiss refers to a "Successive Post-Conviction Petition" filed by defendant's counsel on May 6, 2009, the record does not contain such a document. The record does, however, contain counsel's Rule 651(c) certificate, filed on May 6, 2009, which stated that counsel would not be filing a supplemental petition.

successive postconviction petition may be granted when a defendant has established cause and prejudice, or when fundamental fairness so requires. *People v. Pitsonbarger*, 205 Ill. 2d 444, 459 (2002). Pursuant to the cause-and-prejudice test, the defendant must show good cause for failing to raise the claimed error in a prior proceeding and that actual prejudice resulted from the error. *People v. Morgan*, 212 Ill. 2d 148, 153 (2004). "Cause" may be shown by pleading some objective factor external to the defense that impeded counsel or defendant from timely raising the claim in an earlier proceeding. *Pitsonbarger*, 205 Ill. 2d at 460. "Prejudice" is defined as an error so infectious to the proceedings that the resulting conviction violated due process. *Pitsonbarger*, 205 Ill. 2d at 464. The failure to establish either prong of the cause-and-prejudice test is a statutory bar to the filing of a successive postconviction petition. *People v. Lee*, 207 Ill. 2d 1, 5 (2003). This court reviews the trial court's denial of leave to file a successive postconviction petition *de novo*. *People v. LaPointe*, 227 Ill. 2d 39, 43 (2007).

¶ 9 Here, defendant seeks the relief ordered by our supreme court in *People v. Whitfield*, 217 Ill. 2d 177, 202 (2005), where the court determined that the remedy for a defendant who was not advised of the MSR term before he entered his guilty plea was to reduce the sentence by the MSR term. However, in *People v. Morris*, 236 Ill. 2d 345, 366 (2010), our supreme court determined that *Whitfield* announced a new rule that will not be applied retroactively to cases on collateral review. Specifically, *Whitfield* may only be applied prospectively to cases where the defendant's conviction was not finalized prior to December 20, 2005, the date that *Whitfield* was announced. *Morris*, 236 Ill. 2d at 366.

¶ 10 In the case at bar, defendant entered his guilty plea in 1998 and his direct appeal was decided in 2000. Thus, his conviction was finalized five years before *Whitfield* was decided.

Accordingly, defendant is not entitled to application of the rule announced in that case. *Morris*, 236 Ill. 2d at 366.

¶ 11 Defendant seeks to avoid the effect of *Morris* by arguing, independent of *Whitfield,* that he was denied due process pursuant to *Santobello v. New York*, 404 U.S. 257, 262 (1971), in which the Supreme Court held that "when a plea rests in any significant degree on a promise or agreement of the prosecutor, so that it can be said to be part of the inducement or consideration, such promise must be fulfilled."

¶ 12 However, this court rejected a similar argument in *People v. Demitro*, 406 Ill. App. 3d 954, 957 (2010), finding that because *Whitfield* was the first time our supreme court relied on *Santobello* "in the context of MSR," a defendant cannot assert a claim for that remedy without citing *Whitfield.* In other words, a defendant citing *Santobello* cannot avoid the effect of its progeny *Whitfield* and its limitation, under *Morris,* to a prospective application. *Demitro,* 406 Ill. App. 3d at 957.

¶ 13 Accordingly, as the remedy defendant seeks is not available to him under *Morris*, there is no prejudice. Absent prejudice defendant cannot meet both prongs of the cause-and-prejudice test and is therefore statutorily barred from filing his successive *pro se* postconviction petition (*Lee*, 207 Ill. 2d at 5).

¶ 14 For the reasons stated above, we affirm the judgment of the circuit court of Cook County.

¶ 15 Affirmed.