

SIXTH DIVISION  
November 30, 2012

No. 1-11-1067

**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. 97 CR 11558
	)	
DANTE HANDY,	)	Honorable
	)	James B. Linn,
Defendant-Appellant.	)	Judge Presiding.

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PRESIDING JUSTICE LAMPKIN delivered the judgment of the court.  
Justices Hall and Garcia concurred in the judgment.

**ORDER**

¶ 1 *Held:* Denial of leave to file defendant's successive post-conviction petition affirmed over defendant's claim that the circuit court did not comply with its statutory duty to examine the claims in the petition.

¶ 2 Defendant Dante Handy appeals the circuit court's order that denied leave to file his *pro se* successive petition for relief under the Post-Conviction Hearing Act (Act). 725 ILCS 5/122-1(f) (West 2010). On appeal, defendant contends that the oral statements made by the circuit court during its ruling shows that it did not sufficiently examine his successive petition. We affirm.

¶ 3 Defendant and three codefendants, Derrick Harris, Sammy Lowery, and Erskine DeLoach, who are not parties to this appeal, were charged with multiple offenses arising from the abduction and assault of members of the Watson family in February 1997. The cases were severed, but the trials were heard simultaneously. Following defendant's jury trial, he was convicted of aggravated criminal sexual assault, home invasion, armed robbery, aggravated kidnaping, aggravated battery of a senior citizen, residential burglary, burglary, and possession of a stolen motor vehicle. Defendant was sentenced on three counts of aggravated criminal sexual assault and one count of home invasion, to four consecutive terms of 30 years' imprisonment. This court affirmed that judgment on direct appeal. *People v. Handy*, No. 1-98-3010 (2002) (unpublished order under Supreme Court Rule 23).

¶ 4 In 2003, defendant filed a *pro se* post-conviction petition, alleging, in part, that he was denied effective assistance of trial and appellate counsel, and that his consecutive sentences were excessive and void. The circuit court denied the petition, and we affirmed that judgment on appeal. *People v. Handy*, No. 1-03-1817 (2004) (unpublished order under Supreme Court Rule 23).

¶ 5 On March 2, 2011, defendant filed the instant motion for leave to file a successive post-conviction petition, along with the petition itself, which was entitled "successive petition for post-conviction relief and motion for forensic DNA testing not available at trial in support of a claim of actual innocence." In the petition, defendant alleged that further DNA testing was required, which was not available at trial, and that this additional testing would undermine the State's proof of identity. He maintained that his request for further DNA testing was a form of newly discovered evidence of his actual innocence. Defendant also alleged that he was deprived of due process because his sentence was imposed under a statutory scheme, *i.e.*, the truth-in-sentencing legislation, which had been found unconstitutional.

¶ 6 When defendant's successive petition came before the court on March 16, 2011, the circuit court acknowledged that it was his second post-conviction petition. The court stated that in defendant's instant petition he was asserting that,

"there are a number of errors in his trial, including the fact that the DNA evidence that was used at his trial was based on partial profiles, mixed profiles. He thinks DNA testing is more precise now and might have caused a different opinion to be rendered about the DNA. He's also saying the felony review assistant got emotional in his trial, which is a problem, and he didn't like a juror being excused for cause. He thought the juror was sufficient during voir dire to withstand a motion for cause. There is some evidence of gang membership, which he thought[t] denied him a fair trial, evidence about the victim's freshly-ruptured hymen he thought should not have been admitted at his trial, and he wanted some non-IPI instructions about how to view statements made to law enforcement by the accused, by himself, and the Court should have \*\*\* instructed them differently about the voluntariness of the statements."

In evaluating defendant's claims, the court concluded that:

"These are matters that were resolved at trial, resolved at his appeal. There is nothing here of a constitutional magnitude to indicate he did not receive a fair trial, that anything that happened in the trial court rises to constitutional infirmities. Accordingly, his *pro se* petition for successive postconviction relief is denied."

Subsequently, the circuit court sent defendant a certified report of disposition in which the clerk of the circuit court advised him that on March 16, 2011, his motion for "leave to file a successive petition for post-conviction relief [was] denied."

¶ 7 On appeal, defendant asserts that the denial of leave to file his successive post-conviction petition was improper because the trial court did not comply with its statutory duty to examine his petition. In particular, defendant faults the trial court for not discussing the cause-and-prejudice test and not addressing all the claims included in the petition. Defendant's challenge to the court's procedural handling of the petition is totally without merit and shows a misunderstanding of the law regarding successive post-conviction petitions.

¶ 8 Section 122-1(f) of the Act expressly contemplates the filing of only one post-conviction petition unless the defendant can overcome the statutory requirements for the filing of a successive petition:

"(f) Only one petition may be filed by a petitioner under this Article without leave of court. Leave of court may be granted only if a petitioner demonstrates cause for his or her failure to bring the claim in his or her initial post-conviction proceedings and prejudice results from that failure." 725 ILCS 5/122-1(f) (West 2010).

This section proceeds to define the terms cause and prejudice. Defendant submits that this statutory section requires some judicial evaluation of the successive petition before a ruling is made and then extrapolates a statutory duty on the part of the circuit court to articulate its examination of each claim and its consideration of the cause-and-prejudice test. The Act does not impose a statutory duty on the circuit court to articulate its evaluation process either verbally or in writing. *People v. Leason*, 352 Ill. App. 3d 450, 452 (2004) (the circuit court is not

required to "state the underlying law and facts it relied upon in dismissing the [successive] petition"), relying on *People v. Porter*, 122 Ill. 2d 64, 84 (1988). Defendant is not prejudiced by the absence of such duty on the circuit court because its ruling will be reviewed on appeal. *Id.*

¶ 9 The order on appeal for our review is the circuit court's denial of leave to file defendant's *pro se* successive petition. Most importantly, this court reviews *de novo* the ruling on a successive post-conviction petition. *People v. Williams*, 392 Ill. App. 3d 359, 367 (2009). Moreover, we review the judgment of the circuit court, not its reasoning, and may affirm the judgment on any basis supported by the record. *People v. Rajagopal*, 381 Ill. App. 3d 326, 329 (2008). Accordingly, we do not rely on the reasoning of the circuit court, whether it be an oral or written pronouncement.

¶ 10 Defendant, however, has expressly chosen to contest only the circuit court's *procedural* handling of the petition. Therefore, he has waived any arguments on the merits of his allegations or his successive petition. See Ill. S. Ct. R. 341(h)(7) (eff. July 1, 2008) ("Points not argued are waived").

¶ 11 In the order on appeal, the circuit court made a lengthy oral pronouncement and issued a written dispositional order advising defendant that his motion "for leave to file a successive petition for post-conviction relief [was] denied." From the oral pronouncement defendant inappropriately proffers that the record offers no confidence that the court actually considered his instant claims. To the contrary, our thorough examination of the petition and the lengthy statements by the court reveal its understanding of the case, the petition and defendant's claims. Furthermore, no written order is required and the court is not required to specify findings of fact and conclusions of law. *Leason*, 352 Ill. App. 3d at 452, citing *Porter*, 122 Ill. 2d at 84.

¶ 12 Defendant also incorrectly faults the circuit court for failing to reference "the *sine qua non* determination" that the petition is frivolous or is patently without merit under section 122-

2.1(a)(2) of the Act. 725 ILCS 5/122-2.1(a)(2) (West 2010). The supreme court rejected this standard for a successive post-conviction petition. *People v. Walter Edwards*, 2012 IL 111711, ¶¶ 25, 29. The supreme court in *Edwards* expressly held that "there is simply no basis in the statute for applying a first-stage analysis to a *successive* petition. Section 122-1(f), which governs successive petitions, describes the 'leave of court' requirement but makes no mention of the frivolous or patently without merit standard, which is set forth in a separate provision, section 122-2.1(a)(2)." (Emphasis in original). *Id.* at ¶27. Thus, the circuit court was correct in not applying or referencing the wrong standard.

¶ 13 For the foregoing reasons, we affirm the judgment of the circuit court.

¶ 14 Affirmed.