SIXTH DIVISION
May 29, 2015

No. 1-13-0793

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. 02 CR 09423
	)	
SHAUNTAE ROBERTSON,	)	Honorable
	)	Evelyn B. Clay,
Defendant-Appellant.	)	Judge Presiding.

JUSTICE LAMPKIN delivered the judgment of the court.
Presiding Justice Hoffman and Justice Hall concurred in the judgment.

O R D E R

¶ 1 *Held*: Defendant has not met prejudice requirement for filing successive post-conviction petition; even if defendant's challenged confession was excluded from evidence, the remaining testimony established defendant's guilt. Moreover, defendant improperly raises an additional claim regarding closing arguments for the first time in this appeal.

¶ 2 Defendant Shauntae Robertson appeals from the circuit court's denial of leave to file a successive post-conviction petition. In that petition, defendant alleges that his counsel on direct appeal was ineffective in failing to challenge the trial court's denial of his motion to suppress his confession. He also contends his direct-appeal counsel should have argued that portions of the

prosecution's closing arguments were improper. Defendant contends his documented low intelligence quotient (IQ) and second-grade reading level hampered his understanding of his written confession and his ability to enunciate his current claims in his initial post-conviction petition, thus providing cause to raise those contentions in a successive filing. He further argues he was prejudiced by direct-appeal counsel's failure to present those meritorious issues. For the reasons set forth below, we affirm.

¶ 3 Defendant and Michael McGowan were charged with first degree murder in the 2002 shooting death of Ernest "Shaky" Spencer and also were charged with attempted first degree murder and aggravated discharge of a firearm for shooting in the direction of Michael Blalock. Before his trial, defendant filed motions to quash his arrest and suppress his statement to police. The motion to suppress asserted that defendant "was compelled to sign a statement that he was incapable of fully reading and comprehending" and that his statement was obtained as a result of physical coercion. The motion alleged defendant was struck by a gun at the time of his arrest and was punched and hit in the chest while at the police station. The motion further stated defendant was interrogated for four days before signing a statement and only did so to leave the station.

¶ 4 The following testimony adduced at the suppression hearing is relevant to the issues raised on appeal. Chicago police detective Brian Forberg testified that in the evening of February 1, 2002, he spoke with Blalock at the police station. Blalock said he had been seated in the car of Pharoo Witherspoon in the 4700 block of Ashland Avenue that afternoon. Witherspoon had driven Blalock and Spencer to the area. Witherspoon went into Cisco's, a nearby shoe store, with his young daughter, and Spencer entered a nearby restaurant while Blalock waited in the car, which was double-parked.

¶ 5 At 3:10 p.m., as Spencer came out of the restaurant, he was approached by three subjects, one of whom Blalock called "Shaunie" and later identified as defendant. According to Blalock, defendant fired a pistol at Spencer and then pointed the gun at Blalock's vehicle and fired. Blalock sustained two graze wounds. Later that day, Blalock identified defendant and Amin Williams in a police photo array.

¶ 6 Detective Forberg also interviewed Witherspoon, who observed the shooting from the store and identified one of the people with defendant as Amin Williams, whose nickname was "Twin." (Witherspoon also was nicknamed "Twin"). Witherspoon said he saw the shooting but Williams was not the person who fired the gun. Witherspoon identified Williams in a photo array.

¶ 7 Defendant was arrested on March 7 and was interrogated over the course of four days until he signed a handwritten confession on March 11. Detective Forberg testified he was present at 9:30 p.m. on March 7 when another detective advised defendant of his *Miranda* rights, and defendant responded that he had no problem answering questions. That questioning lasted 15 or 20 minutes, and a second conversation of similar length occurred at about midnight. Defendant denied involvement in the crimes in both of those conversations.

¶ 8 At 5:50 p.m. on March 8, Blalock and Witherspoon viewed a lineup in which Blalock identified defendant. That lineup was also viewed by Lasonya Giles, who was in Cisco's when the shooting occurred. At about 7:15 p.m., Detective Forberg and his partner advised defendant of his *Miranda* rights before interviewing him again. Defendant again denied participating in the shooting, and after that interview, police attempted to locate McGowan and Williams, among

other individuals. Detective Forberg testified defendant and McGowan were connected with the Black P-Stone street gang.

¶ 9 Detective Forberg again spoke with defendant at 3 a.m. on March 10. Defendant was again informed of his *Miranda* rights and consented to an interview. Defendant agreed to take a polygraph examination, which was then scheduled but which defendant did not undergo. Defendant was placed back into an interview room. Detective Forberg spoke to assistant Cook County State's Attorney James Murphy, who was the felony review attorney on call, and had conversations with defendant's mother and girlfriend.

¶ 10 At 12:30 a.m. on March 11, Detective Forberg and his partner again advised defendant of his *Miranda* rights, which he indicated he understood. Defendant made an inculpatory statement during that conversation, which lasted for 15 or 20 minutes. ASA Murphy then joined the detectives and again advised defendant of his rights under *Miranda*, which he acknowledged. Defendant again made a statement incriminating himself in the shooting. ASA Murphy also spoke to defendant alone.

¶ 11 At about 1:25 a.m. on March 11, with both detectives and ASA Murphy present, defendant agreed to make a statement in handwritten form. Detective Forberg testified that ASA Murphy reviewed the statement with defendant, reading the handwritten portion to defendant "line by line, allowing [him] to make any additions, corrections, deletions that he believed necessary and consistent with his account." Detective Forberg testified defendant did not indicate he failed to understand what was being read to him, and he denied that he or any other police personnel physically coerced defendant. Defendant did not assert any of his rights under

Miranda and was given food between six and eight times over the course of his questioning. Detective Forberg also saw defendant sleeping in the interview room multiple times.

¶ 12 On cross-examination, Detective Forberg said that when he interviewed defendant, defendant responded to the questions that were asked. When ASA Murphy first met defendant in the detectives' presence, ASA Murphy introduced himself and told defendant that he was a Cook County prosecutor working with the police and was not his attorney. After defendant answered questions, ASA Murphy advised defendant that he could have his statement videotaped. Defendant said he wanted the statement to be written out.

¶ 13 Detective Forberg stated after defendant's statement was memorialized, defendant read aloud the typewritten paragraphs at the top of the statement form that contain the *Miranda* admonitions and also read aloud the first paragraph of the handwritten portion of the statement. Defendant did not read the entire statement aloud. ASA Murphy then read the remainder of the statement to defendant to allow him to make corrections. Detective Forberg did not recall if any corrections were made.

¶ 14 ASA Murphy testified he met with defendant and the detectives in the early morning hours of March 11, as Detective Forberg had described. Defendant indicated he understood each of his *Miranda* rights as recited to him. ASA Murphy advised defendant his statement could be memorialized in writing, recorded by a court reporter, or be videotaped. As to a written statement, ASA Murphy told defendant one option was that he would write down defendant's statement but that defendant would not be allowed to review his notes. Alternatively, defendant could give a handwritten statement where ASA Murphy would write down defendant's responses to the questions asked. Defendant would have the opportunity to read and review the statement

and make changes. Defendant chose the latter option, telling the attorney he did not want to be on video.

¶ 15 ASA Murphy testified he asked the detectives to step out of the room and asked defendant how he had been treated since he had been at the police station. Defendant said he had been given food, drink and cigarettes and was able to sleep and use the bathroom. Defendant told ASA Murphy he elected not to proceed with the polygraph test because, in defendant's words, he "wanted to come clean and tell the police and cooperate with the police."

¶ 16 ASA Murphy then wrote down defendant's statement, which defendant reviewed when it was complete. ASA Murphy testified that he read the statement aloud to defendant and asked defendant to read a portion of the statement back. Defendant read the preprinted *Miranda* warnings aloud and "had some problems with some of the words – [s]ome of the words I helped him on as he came to them."

¶ 17 ASA Murphy said defendant never told him he could not read or indicate any confusion or failure to understand what ASA Murphy was reading to him. Defendant, the prosecutor and the detectives signed each page of the statement. As ASA Murphy read the statement to defendant, defendant stopped him and said he wanted to change the name "Shaky" at one point in the statement to the name of Joe Cobbins. (As a result of that change, police apparently then questioned Cobbins, who did not corroborate defendant's account). ASA Murphy described defendant's demeanor as conversational and alert. On cross-examination, ASA Murphy stated that his questions to defendant were oral and not in written form. Defendant's statement was admitted into evidence.

¶ 18 For the defense, Dr. Randi Zoot testified as an expert in forensic psychology and psychotherapy and clinical psychology. Dr. Zoot evaluated defendant on January 8 and January 16, 2004, and administered several tests to determine his ability to understand his confession and waive his *Miranda* rights. Before meeting with defendant, Dr. Zoot reviewed the police reports in this case and various reports and educational summaries that revealed defendant displayed various cognitive deficiencies and took special education classes as a child. Dr. Zoot testified that defendant had "difficulty with simple vocabulary words" and also could not always comprehend words that were spoken to him.

¶ 19 Dr. Zoot testified defendant had a verbal IQ of 71 and a full-scale IQ of 71, which placed him in the range of borderline to mild mental retardation, describing him as "significantly cognitively limited." The doctor described defendant's vocabulary as "quite poor" and said he did not hear some words correctly and did not always process what he heard. Dr. Zoot testified that defendant demonstrated a second- or third-grade reading level. Defendant completed the eighth grade taking special education classes.

¶ 20 As to defendant's statement, Dr. Zoot asked him to read aloud the first paragraph of his statement indicating he was advised of his constitutional rights and that ASA Murphy was a prosecutor. Defendant was not able to recite the word "constitutional" or the portion describing ASA Murphy as a prosecutor, and defendant told the doctor he had difficulty reading cursive writing. Dr. Zoot opined that defendant was not malingering.

¶ 21 Dr. Zoot testified defendant was able to knowingly waive his *Miranda* rights. Defendant also told Dr. Zoot he knew he signed a confession and did so because "he wanted to get out of the police station and he wanted to get to the jail so he could call his people." Dr. Zoot opined

that defendant could not read the handwritten statement but could understand the statement as read to him "[i]f it was read to him slowly, repeatedly, checking that he was grasping each part of it." The doctor stated defendant has the "capacity to understand" and "to get the gist of what the statement says," though he may not comprehend specific details.

¶ 22 Dr. Zoot opined that when the statement was read to defendant, he knew he was signing a confession. When asked if defendant appreciated the gravity of that action, Dr. Zoot said defendant knew he was signing a confession that "was going to make it worse for him in court" but that defendant also had the "childlike thinking" that if he could reach his "people," his confession could be undone.

¶ 23 On cross-examination, Dr. Zoot said defendant could follow directions but some required repeating, either because defendant's concentration was impaired, defendant was distracted or he did not hear the direction correctly. During one exercise, when shown a picture of a table without all four legs, defendant correctly identified that a leg was the missing part, though he used the word "stem."

¶ 24 When defendant was shown and was read the portion of the statement describing his *Miranda* rights, defendant said that was what he had been told. Dr. Zoot stated defendant knew he was signing a confession but "he didn't know what was in the confession," though defendant knew it could be "used against him in court." Defendant told the doctor he "didn't know the specifics of what he was signing" and the police "wrote something" and he was told to sign his name and initials. Dr. Zoot stated defendant could interact appropriately with others but had issues with impulse control and anger control.

¶ 25 Dr. Zoot did not review the entire statement with defendant and testified that defendant would have difficulty following a verbal recitation that lasted for 5 or 10 minutes. However, Dr. Zoot stated defendant could carry on a conversation lasting an hour or more, explaining he could comprehend language and conversation but "makes errors in processing information" and "doesn't always hear things clearly," though defendant would understand the gist of what was being read to him.

¶ 26 In addition to Dr. Zoot, the defense presented Delores Wilson, defendant's girlfriend, as a witness at the motion hearing. Wilson testified that when defendant was arrested at her mother's house, defendant had a gun in his possession and ran toward the back of the house, with officers in pursuit. Wilson stated that the police beat defendant, leaving blood on the wall and floor.

¶ 27 After hearing argument, the trial court denied defendant's motions to quash his arrest and suppress his statement, finding police had probable cause to arrest him and that his statement was voluntarily given. The court found defendant understood his oral statement as it was read to him, pointing out that defendant made corrections, and the court also noted that defendant was advised of his *Miranda* rights seven times. The court found that defendant's time at the police station was reasonable under the circumstances and a portion of that time was attributable to his request for a polygraph examination, which he subsequently refused to take. The court further remarked defendant had prior experience with the criminal justice system and had "street smarts." The court also observed defendant gave no indication he was mistreated by police.

¶ 28 The court then held defendant and McGowan's simultaneous trial before separate juries. Blalock testified that he, defendant and McGowan grew up in the same neighborhood. Blalock saw defendant approach Spencer on the sidewalk, raise his weapon and fire one shot. Defendant

then fired three or four shots at the car, where Blalock sat. Blalock said his view of defendant was unobstructed. Williams was standing next to defendant. When Witherspoon came out of the store after the shooting, Blalock told him defendant was the gunman.

¶ 29 Blalock testified he did not see McGowan at the scene, though he acknowledged his earlier statement to police that two men were with defendant and he recognized all three of them. Blalock testified he knew Joe Cobbins, who had previously beaten defendant in an altercation at which Spencer was present.

¶ 30 Dasier Herron, McGowan's wife, testified that on the day of the shooting, she saw McGowan take a gun from under their bed and put it under the seat of his car. At about 3 p.m., she rode in a car with defendant, Williams and McGowan, and defendant had the gun in his waistband. After seeing Witherspoon's car, which was double-parked, defendant said, "There go them bitches right there." McGowan parked the car about a block away, and she and McGowan stayed in the car. Defendant and Williams left and returned 5 or 10 minutes later. Defendant told McGowan that he "shot Shaky in the gut and shot Mike D. (Blalock) in the leg." Defendant threw bullets out of the car window when they were on the expressway.

¶ 31 Giles, who is Witherspoon's cousin, testified she saw him and his daughter in the shoe store, where they briefly spoke. Giles also knew Spencer but did not know defendant. Giles testified she saw "Twin," meaning Williams outside the store. A short time later, Giles heard gunshots. She testified the shooter was wearing a hooded sweatshirt with the hood up and that she could not see his face.

¶ 32 Wilson, defendant's girlfriend, again testified that on the day of the shooting, she lived with her mother, Estella Taylor, and defendant arrived at their house at about 4 p.m. along with

Williams and said they had done "something wrong." Defendant went to Madison, Wisconsin, for two weeks after the shooting, and then returned to their house, where he kept a gun in Wilson's room. Wilson identified the gun in court. Defendant was arrested at their house after Wilson's sister provided police with an anonymous tip. Wilson recanted parts of her statement to police but was impeached with portions of her grand jury testimony. In addition to Wilson's testimony, Taylor testified she had no knowledge of the crime but was impeached with her grand jury testimony that she had seen defendant with a gun at her house.

¶ 33 Defendant's statement was published to the jury. In the statement, defendant said that a few weeks before the shooting, he was playing dice with a group of men and was beaten in a dispute over a car, and his assailants included Spencer and Blalock. At about 3 p.m. on the day of the shooting, defendant was riding in a car with Williams (referred to as Twin in the statement) and McGowan when Williams said, "There go them bitches right there." Williams was referring to Spencer and Blalock, who were near a car that was double-parked. McGowan told Williams to "handle that," and McGowan parked the car. Defendant and Williams got out of the car and walked toward the double-parked car, and Williams passed the gun to defendant.

¶ 34 In the statement, defendant said that when Spencer emerged from a store, Williams greeted him, and defendant raised the gun, only intending to shoot Spencer in the leg to avenge the earlier altercation. Spencer reached toward the barrel of the gun and "the gun raised a little bit and it went off." Defendant saw Blalock duck down from his seat in the nearby parked car. Defendant fired two shots at the parked car. Defendant said he did not see a weapon on Spencer or Blalock, and defendant admitted he told Wilson and Taylor that he shot Spencer.

¶ 35 For the defense, Dr. Zoot testified, largely reiterating her testimony at the motion hearing. Dr. Zoot described her evaluation and testing of defendant and his numeric IQs as determined by that testing, and the doctor concluded that defendant could read at a "mid-second-grade level," equivalent to a seven-year-old child, and could not read cursive writing. Dr. Zoot stated that defendant could understand what was read to him. In addition, Joe Cobbins testified that he bought a car from defendant during the dice game but denied assaulting defendant.

¶ 36 At the close of evidence, the jury convicted defendant of first degree murder and aggravated discharge of a firearm. The defense filed a motion for a new trial, which was denied. Defendant was sentenced to concurrent terms of 45 years and 15 years in prison, respectively.

¶ 37 In defendant's direct appeal, he asserted he was denied a fair trial because the court allowed evidence of his possession of a gun that was unrelated to the weapon used in the instant crimes. This court rejected that argument and affirmed defendant's convictions and sentences. *People v. Robertson*, No. 1-07-2159 (2010) (unpublished order under Supreme Court Rule 23).

¶ 38 In November 2010, defendant filed a *pro se* petition seeking relief under the Post-Conviction Hearing Act (the Act) (725 ILCS 5/122-1 *et seq*. (West 2010)). In that filing, defendant alleged his trial counsel was ineffective for failing to call John Ku as a witness for the defense, asserting that Ku did not identify defendant in a lineup. The circuit court dismissed that petition, stating the presentation of witnesses is a matter of trial strategy generally immune from claims of ineffective assistance, and noting that no affidavit from Ku was attached to the petition. The record does not indicate that defendant appealed that ruling.

¶ 39 On April 6, 2012, defendant sought leave to file a successive *pro se* petition for post-conviction relief, which is the subject of this appeal. In his successive petition, defendant

contends his trial counsel was ineffective for failing to: (1) argue he was illegally detained by police and that his statement was involuntary; (2) seek a change of venue for his trial due to his two previous proceedings for unlawful use of a weapon; (3) object to hearsay evidence; (4) inform defendant of his constitutional right to testify; (5) move for an acquittal because the verdicts were inconsistent and the evidence did not prove his guilt beyond a reasonable doubt; (6) object to evidence that he refused to submit to a polygraph exam; (7) request a fitness hearing; and (8) call Ku as a witness to testify he did not identify defendant in a lineup.

¶ 40 Also in the successive petition, defendant contends his trial counsel erred in failing to object to and preserve several claims for appeal and also that he was denied the effective assistance of appellate counsel in failing to raise meritorious claims on appeal. The petition does not specify particular claims but simply cites appellate counsel's failure to "raise the issues of record herein." Defendant describes his mental deficiencies, including his "second-grade reading and writing level." Additionally, defendant alleges he is actually innocent of the crime, attaching to the petition a 2010 affidavit of McGowan stating he did not give defendant a gun to commit a crime and did not order defendant to shoot anyone. The petition and accompanying affidavits from defendant describe his mental deficiencies.

¶ 41 On October 26, 2012, the circuit court denied defendant's request for leave to file a successive petition under the Act, finding defendant had not met the cause and prejudice requirements to bring such a petition. The court further found that all of the issues raised were either barred by *res judicata* or waiver and that McGowan's affidavit did not establish defendant's actual innocence. Defendant now appeals that ruling.

¶ 42 On appeal, defendant contends his counsel on direct appeal was ineffective in failing to challenge the denial of his motion to suppress his inculpatory statement. Defendant contends he has met the cause and prejudice requirements to advance his successive post-conviction petition because his mental deficiencies prevented him from raising that contention earlier and he was prejudiced by the failure of direct-appeal counsel to present the issues.

¶ 43 The Act allows criminal defendants to challenge their conviction or sentence based on a substantial deprivation of their constitutional rights. 725 ILCS 5/122-1(a)(1) (West 2010). The Act contemplates the filing of only one post-conviction petition; accordingly, successive petitions are disfavored by Illinois courts. *People v. Guerrero*, 2012 IL 112020, ¶ 15; 725 ILCS 5/122-1(f) (West 2010). We review *de novo* the denial of leave to file a successive post-conviction petition. *People v. Eddmonds*, 2015 IL App (1st) 130832, ¶ 14.

¶ 44 To bring a successive post-conviction petition, a defendant must satisfy the requirements of cause and prejudice set forth in the Act. 725 ILCS 5/122-3 (West 2010). To establish "cause," the defendant must show some objective factor, external to the defense, that impeded his ability to raise the claim in his initial post-conviction proceeding. *People v. Coleman*, 2013 IL 113307, ¶ 82, citing *People v. Pitsonbarger*, 205 Ill. 2d 444, 460 (2002). To establish "prejudice," the defendant must show the claimed constitutional error so infected his trial that the resulting conviction violated due process. *Coleman*, 2013 IL 113307, ¶ 82, citing *Pitsonbarger*, 205 Ill. 2d at 464.

¶ 45 Although defendant contends in his initial brief to this court that he need only make an "arguable" showing of cause and prejudice, he acknowledges in his reply brief that during the pendency of this appeal, the Illinois Supreme Court has decided *People v. Smith*, 2014 IL

115946. In *Smith*, the supreme court rejected the defendant's attempt to apply that first-stage analysis in an initial post-conviction proceeding to successive post-conviction filings, noting the Act does not allow the application of the "arguable" or "gist" standard to successive petitions. *Id*. ¶ 30. The supreme court noted that "treating successive petitions the same as initial petitions *** ignores the well-settled rule that successive post-conviction actions are disfavored by Illinois courts." *Id*. ¶ 31, quoting *People v. Edwards*, 2012 IL 111711, ¶ 29.

¶ 46 Thus, having established that defendant must make a clear showing, not just an "arguable" showing of cause and prejudice, *Smith* informs us that a defendant's *pro se* motion for leave to file a successive post-conviction petition will meet the cause and prejudice requirements if the motion adequately alleges facts demonstrating both cause and prejudice. *Smith*, 2014 IL 115946, ¶ 34. Defendant must meet both requirements, and where he has failed to satisfy the prejudice prong, we need not address whether he has met the cause requirement. *Id*. ¶ 38.

¶ 47 Defendant's first claim is that his counsel on direct appeal should have challenged the denial of his motion to suppress his confession. An argument of ineffective counsel requires a defendant to satisfy the standard set forth in *Strickland v. Washington*, 466 U.S. 668, 685-87 (1984), where he must show appellate counsel's performance was deficient and that, but for counsel's errors, there is a reasonable probability that the appeal would have succeeded. *People v. English*, 2013 IL 112890, ¶ 33.

¶ 48 Employing that *Strickland* framework, where a defendant argues that his counsel on direct appeal failed to raise a particular issue, the defendant must show that the failure to raise the issue was objectively unreasonable and that, but for this failure, a reasonable probability exists that the result of the defendant's trial would have been different. *People v. Mitchell*, 189

Ill. 2d 312, 332 (2000). Appellate counsel is not required to raise every conceivable issue on appeal, and counsel is not incompetent in refraining from raising issues that he or she believes are without merit, unless counsel's appraisal of the merits is patently wrong. *People v. Simms*, 192 Ill. 2d 348, 362 (2000).

¶ 49 Even assuming *arguendo* that the decision of defendant's direct-appeal counsel was unreasonable in forgoing that issue, defendant cannot show the result of his trial would have differed had counsel brought the motion and had his confession been suppressed. Blalock witnessed the shooting and identified defendant as the person who fired the gun. Two additional witnesses, Witherspoon and Giles, witnessed the shooting; neither provided evidence inconsistent with defendant's guilt. Furthermore, McGowan's wife testified that she was in the car when defendant committed the crime and heard defendant describe the events when he returned to the car. Defendant's then-girlfriend testified that defendant kept a gun at her house and arrived there within an hour of the shooting along with Williams, reporting they had done "something wrong." Given those facts, we cannot conclude there is a reasonable probability that had defendant's statement been suppressed, the outcome of his trial would have been different. See *People v. Givens*, 237 Ill. 2d 311, 331 (2010). Unless the underlying issue has merit, there is no prejudice from appellate counsel's failure to raise it on appeal. *People v. Edwards*, 195 Ill. 2d 142, 164 (2001).

¶ 50 Defendant next asserts his counsel on direct appeal should have asserted that the prosecution made numerous improper statements in closing argument. In his brief to this court, defendant lists seven excerpts from the State's closing argument to which defense counsel raised

timely objections. As with the preceding contention, defendant argues his mental deficiencies prevented him from raising this claim in his initial post-conviction petition.

¶ 51 It is incumbent upon this court to note that defendant has not enunciated this claim in his successive petition. A defendant can raise issues in a successive petition that were not raised in the initial petition, provided that defendant meets the cause and prejudice requirements. 725 ILCS 5/122-1(f) (West 2010). However, a defendant cannot raise on appeal for the first time a claim that was not included in the initial or a successive post-conviction petition. See 725 ILCS 5/122-3 (West 2010) ("Any claim of substantial denial of constitutional rights not raised in the original or an amended petition is waived."); *People v. Cathey*, 2012 IL 111746, ¶ 21.

¶ 52 A careful review of defendant's successive petition and all attachments establishes that defendant did not even mention closing arguments. Defendant filed a 21-page successive post-conviction petition to which he attached 12 affidavits, including one each from defendant's mother and McGowan and 10 affidavits of defendant himself. Defendant also included with his petition approximately 35 pages of trial transcripts. None of these documents reference or allude to closing arguments.

¶ 53 This case involves a successive post-conviction filing. Even if we were operating under the low standard of review applied to initial post-conviction petitions, this court cannot review issues that are not presented in the petition. See *People v. Petrenko*, 237 Ill. 2d 490, 502 (2010), citing *People v. Jones*, 211 Ill. 2d 140, 148 (2004) ("a defendant may not raise an issue for the first time while the matter is on review.") The general language of our supreme court relating to post-conviction claims indicates that "any issues to be reviewed must be presented in the petition

filed in the circuit court." *Jones*, 211 Ill. 2d at 148, quoting *People v. Coleman*, 183 Ill. 2d 366, 388 (1998).

¶ 54 It is axiomatic that the higher standard of review applied to successive petitions (*Smith*, 2014 IL 115946, ¶ 30) necessarily precludes our consideration of an issue that has not been included in the successive petition or the documents provided by defendant. As the supreme court noted in *Smith*, "leave of court to file a successive post-conviction 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. That language in *Smith* suggests our review may encompass the successive post-conviction petition and its attachments but should exclude outside claims that were not presented to the circuit court for consideration.

¶ 55 Indeed, this court has recognized, in a case involving a successive post-conviction petition, that its review cannot extend to claims that were not included in the petition itself. In *People v. Anderson*, 375 Ill. App. 3d 121, 140 (2007), this court held that a defendant could not rely upon evidence, for the first time in his appeal of the dismissal of a third successive petition, that was not included or cited to in the petition itself. Therefore, because defendant's successive petition does not include any arguments relating to remarks made by the prosecution in its closing argument at trial, we cannot review this claim for the first time on appeal.

¶ 56 In conclusion, defendant has not established the "prejudice" requirement for a successive post-conviction filing in his claim that his direct-appeal counsel should have challenged the denial of his motion to suppress his inculpatory statement. Furthermore, we cannot consider

defendant's additional claim regarding closing arguments because it was not included in his successive petition or the supporting documentation.

¶ 57 Accordingly, the circuit court's order denying defendant leave to file his successive post-conviction petition is affirmed.

¶ 58 Affirmed.