

NOTICE

This Order was filed under Supreme Court Rule 23 and is not precedent except in the limited circumstances allowed under Rule 23(e)(1).

2024 IL App (4th) 230405-U

NO. 4-23-0405

IN THE APPELLATE COURT

OF ILLINOIS

FOURTH DISTRICT

FILED

February 14, 2024

Carla Bender

4th District Appellate
Court, IL

| | | |
|---------------------------------------|---|------------------|
| THE PEOPLE OF THE STATE OF ILLINOIS, |) | Appeal from the |
| Plaintiff-Appellee, |) | Circuit Court of |
| v. |) | Carroll County |
| ANTONIO SALGADO, a/k/a James Delgado, |) | No. 04CF15 |
| Defendant-Appellant. |) | |
| |) | Honorable |
| |) | John J. Kane, |
| |) | Judge Presiding. |

PRESIDING JUSTICE TURNER delivered the judgment of the court.
Justices Doherty and Knecht concurred in the judgment.

ORDER

¶ 1 *Held:* The appellate court affirmed the trial court's second-stage dismissal of defendant's successive postconviction petition, finding defendant failed to allege sufficient facts to show cause for filing a successive petition.

¶ 2 In August 2004, defendant, Antonio Salgado, a/k/a James Delgado, pleaded guilty to first degree murder (720 ILCS 5/9-1(a)(1) (West 2004)) in connection with the stabbing death of his wife, Theresa Delgado. On August 7, 2007, defendant filed a petition under the Post-Conviction Hearing Act (Act) (725 ILCS 5/122-1 *et seq.* (West 2006)), which the trial court summarily dismissed. On August 30, 2017, defendant filed a motion for leave to file a successive postconviction petition and included a proposed petition. For cause and prejudice under section 122-1(f) of the Act (725 ILCS 5/122-1(f) (West 2016)) as to why he did not include various claims in his first petition, defendant alleged he depended on an inmate to prepare his first petition, who conned him out of money and filed a petition completely lacking

in merit. The court dismissed the petition, and the appellate court reversed because, while postconviction counsel clearly believed defendant's petition was frivolous because it was untimely filed under section 122-1(c) of the Act (725 ILCS 5/122-1(c) (West 2016)), counsel did not file a motion to withdraw or give defendant any notice of an intent to withdraw. Thus, counsel failed to provide defendant with any representation. *People v. Salgado*, 2021 IL App (2d) 190970-U, ¶ 31.

¶ 3 On remand, the trial court appointed new counsel, who amended the petition, including allegations defendant was not culpably negligent in filing his petition late under section 122-1(c) because he lacked an interpreter when communicating with previously appointed counsel and did not understand the law. The court granted the State's motion to dismiss, finding in part the petition was untimely under section 122-1(c), and defendant failed to allege sufficient facts to show the delay was not due to his culpable negligence. The court did not discuss cause and prejudice for filing a successive petition.

¶ 4 On appeal, defendant contends his new postconviction counsel rendered unreasonable assistance by failing to refute the State's claim the petition was untimely and failing to pursue various claims. In particular, defendant argues the time limitation in section 122-1(c) of the Act does not apply to successive petitions and the proper analysis was whether he sufficiently alleged cause and prejudice under section 122-1(f) of the Act.

¶ 5 We determine, even if section 122-1(f) applied to defendant's petition, defendant's allegations he lacked an interpreter to communicate with previous appointed counsel, did not understand the law, and relied on an inmate to prepare his first petition were insufficient to show cause for filing a successive petition. Accordingly, we affirm.

¶ 6 I. BACKGROUND

¶ 7 On April 2, 2004, a grand jury indicted defendant on three counts of first degree murder (720 ILCS 5/9-1(a)(1), (a)(2) (West 2004)). On August 9, 2004, defendant pleaded guilty to count I of the indictment under a fully negotiated plea agreement. Pursuant to the plea agreement, the trial court sentenced defendant to 35 years' incarceration.

¶ 8 During the entry of the guilty plea, defendant initially told the trial court he had difficulty understanding the proceedings, but he then said he understood "what we've been doing in this courtroom." Defendant indicated he had no questions about "what has been happening in this case so far." Defendant stated he was a United States citizen and had attended school in Chicago up to the seventh grade. Defendant stated he was able to read the documents pertaining to his case and indicated he understood the charge to which he was pleading guilty. Defendant also acknowledged he understood his trial rights and the possible sentences that the court could impose. Defendant stated no one had threatened or pressured him into pleading guilty. After the State presented a factual basis for the guilty plea, defendant stated he still intended to plead guilty and did not want to wait for the results of a DNA test. Defendant stated he had an adequate opportunity to discuss the case with his attorney. Defendant then pleaded guilty. When the court asked defendant if he had anything to say before sentencing, defendant replied, "No, I have nothing to say." Defendant also stated he had no questions and understood his appeal rights.

¶ 9 A. Postplea Proceedings

¶ 10 Defendant filed a *pro se* motion to withdraw his guilty plea, alleging he did not understand the proceedings due to drug and alcohol abuse and a limited comprehension of English. Defendant alleged his trial counsel, Donald Schweihs, rendered ineffective assistance by failing to obtain a fitness evaluation and failing to investigate whether defendant had a

meritorious defense. Defendant claimed he came home and found his wife engaged in sex with another man just before her death. Defendant also claimed not to remember anything after finding his wife with the other man. Following an evidentiary hearing, the trial court denied defendant's motion to withdraw his guilty plea, and defendant appealed. On appeal, the only issue defendant raised was whether he should be allowed to withdraw his guilty plea because he had a worthy defense. The Second District affirmed. *People v. Salgado*, No. 2-05-0058 (unpublished order pursuant to Illinois Supreme Court Rule 23).

¶ 11 On August 7, 2007, defendant filed a *pro se* postconviction petition, alleging his guilty plea was involuntary. In particular, he alleged he did not understand the guilty-plea proceedings because of his limited English. The trial court dismissed the petition at the first stage, and defendant appealed. On appeal, the only issue defendant raised was whether the court properly admonished defendant he would be required to serve a term of mandatory supervised release. The Second District affirmed. *People v. Salgado*, No. 2-07-0998 (unpublished order pursuant to Illinois Supreme Court Rule 23).

¶ 12 On July 31, 2009, while his postconviction petition was still pending, defendant filed a *pro se* section 2-1401 petition (735 ILCS 5/2-1401 (West 2008)), seeking to void his conviction on the grounds the trial court failed to order a fitness evaluation and Schweihs was ineffective for failing to request an evaluation. The court granted the State's motion to dismiss and denied defendant's motion to reconsider. Defendant appealed, and the Second District affirmed, but it allowed defendant monetary credit against an assessment for time he spent in presentence custody. *People v. Salgado*, No. 2-09-1028 (unpublished order pursuant to Illinois Supreme Court Rule 23).

¶ 13 B. Defendant's Successive Postconviction Petition

¶ 14 On August 30, 2017, defendant filed a *pro se* motion, by and through his “advocate,” inmate Michael Wilson, for leave to file a successive postconviction petition and included a proposed petition. In the successive petition, defendant alleged Schweih (1) failed to conduct an adequate investigation into his sanity and fitness and did not seek a fitness hearing and (2) gave him bad advice, based on a mistake of fact or law, resulting in his plea to first degree murder, when the evidence would have supported a finding of second degree murder. Defendant also alleged the trial court violated his right to due process by taking him at his word that he was educated and able to understand the proceedings after witnessing his poor English speaking and writing and failing to ascertain if he was fit to stand trial.

¶ 15 Defendant also argued he should be granted leave to file his petition because he demonstrated cause and prejudice under section 122-1(f) of the Act. He stated there was cause for his failure to bring his claims in his first petition because he depended on an inmate who assured him, with a cash payment, the inmate could file a “good” postconviction petition on his behalf. Defendant stated the inmate was “conning” him “out of finances,” which was simple to achieve as defendant was not educated in the law and could not read or write. As a result, his previous postconviction petition was completely without merit. As for prejudice, he argued, in part, the failure to bring his claims earlier infected the judgment and sentence and violated due process. Defendant did not explain why he could not have filed his successive petition earlier than August 2017 or discuss a lack of culpable negligence in failing to file within the time limitations of section 122-1(c) of the Act.

¶ 16 In a supporting affidavit, defendant averred his counsel never spoke to him about his fitness, the possibility of pleading to second degree murder, or what the State had to prove for first degree murder. Defendant averred those events took place in private, and, for that reason,

were verified by his affidavit. As to his due process claims, defendant acknowledged the trial court asked if he could read or write. However, defendant averred he lied and said he could do so out of pride and embarrassment.

¶ 17 Defendant also averred his previous postconviction filings were insufficient because he received unsatisfactory assistance from an inmate law-library aide at the prison. Because he could not read or write beyond a second-grade level, he also had to take the inmate's word for the quality of the work. Defendant attached test results from a correctional center's academic department to substantiate his illiteracy claim.

¶ 18 Defendant also provided an affidavit from Wilson, who averred he helped defendant prepare the petition. Wilson averred defendant was illiterate and had been conned into allowing an inmate to prepare his previous petitions and the inmate's work was incompetent. Wilson averred he had been put in segregation in the past for soliciting or possessing another inmate's information, and thus he could not provide supporting documents, but he averred supporting documents could be obtained from an attorney.

¶ 19 The trial court granted the motion for leave to file a successive petition and appointed attorney Colleen Buckwalter to represent defendant. Buckwalter filed an amended successive postconviction petition and a certificate under Illinois Supreme Court Rule 651(c) (eff. July 1, 2017). In the amended petition, Buckwalter alleged Schweihs failed to investigate defendant's ability to understand the guilty-plea proceedings and failed to request an interpreter for defendant. Buckwalter further alleged defendant's comprehension of English was minimal, resulting in his failure to understand the effect of his plea agreement. Buckwalter's Rule 651(c) certificate stated she consulted with defendant by mail and telephone, examined the record and reports of all proceedings, including the guilty plea, and made the necessary amendments to

defendant's *pro se* successive petition to adequately present his contentions. The amended petition did not address why it was not filed until August 2017.

¶ 20 The State filed a motion to dismiss, alleging defendant's successive petition was untimely. The State did not argue defendant failed to show cause and prejudice to file a successive petition. Instead, the State argued, under section 122-1(c) of the Act, the statutory limitation period for filing a postconviction petition had passed, and defendant failed to allege facts showing the delay in filing his petition was not due to his culpable negligence. The State further moved to dismiss on the grounds of *res judicata*, waiver, and defendant's failure to satisfy the two-pronged test for establishing ineffective assistance of counsel set forth in *Strickland v. Washington*, 466 U.S. 668 (1984).

¶ 21 Buckwalter left the public defender's office, and the trial court appointed attorney David J. Brown to represent defendant. Brown filed a Rule 651(c) certificate stating he consulted with defendant by mail and telephone, examined the record, including the guilty-plea proceedings, and had no further amendments to the successive petition.

¶ 22 At a status hearing, Brown asked the trial court whether defendant should be present at the hearing on the State's motion to dismiss. When the court asked for Brown's position, Brown stated, "It's a straightforward argument. I mean it's very clear that [defendant] was not within the statute of limitations on his filings." The court then inquired whether Brown had spoken to defendant. Brown indicated that he had a half-hour conversation with defendant. The court asked Brown: "[Y]ou didn't have any problem communicating with [defendant]?" Brown answered, "No. He speaks very good English." The court then ruled that it would not require defendant's presence at the upcoming hearing, "since this is strictly a legal argument."

¶ 23 At the hearing on the State’s motion to dismiss, Brown represented he had spoken with defendant and was adopting Buckwalter’s amended successive petition. The State essentially stood on its motion to dismiss without further argument. In response, Brown stated: “[Defendant] does not have the benefit of counsel. He files these things.” Brown continued: “In speaking with [defendant,] I tried to explain to him everything that was going on. I hope he understood me.” The trial court sought clarification of Brown’s last remark, asking, “You were able to communicate with [defendant]?” Brown replied, “Yes. I had—[defendant] speaks very good English. I had no problem over the telephone.”

¶ 24 Brown then elaborated on his communication with defendant, stating, “In speaking with [defendant,] I advised him that there was a Motion to Dismiss pending.” Brown stated he asked defendant “if there was any reason why he would have delayed and he had no reason other than he thought he was doing everything he was [supposed] to be doing to, you know, regarding these matters.”

¶ 25 The trial court took the matter under advisement. On October 29, 2019, the court issued a written memorandum decision and order. The court found defendant responded to “routine explanations and questions appropriately.” The court then detailed the guilty-plea proceedings, extensively quoting from the record, and found defendant understood those proceedings. The court did not rule on whether defendant’s successive petition was untimely but found that, by abandoning his claims of ineffective assistance of trial counsel in his appeals, he forfeited or waived those claims. Defendant timely appealed.

¶ 26 On appeal, the Second District reversed based on unreasonable assistance of postconviction counsel because Brown conceded defendant’s petition lacked merit. The court noted Brown clearly believed defendant’s petition lacked merit, but he did not file a motion to

withdraw or give defendant any notice of an intent to withdraw. Thus, Brown failed to provide defendant with any representation. *Salgado*, 2021 IL App (2d) 190970-U, ¶ 31. Accordingly, the court reversed and remanded for second-stage proceedings. *Salgado*, 2021 IL App (2d) 190970-U, ¶ 31. The court specifically did not decide the merits of the petition. *Salgado*, 2021 IL App (2d) 190970-U, ¶ 18.

¶ 27 On remand, the trial court appointed Daniel Huffman to represent defendant. Huffman moved to withdraw due to a conflict of interest based on a letter he received from defendant. At a hearing on the matter, defendant stated he did not understand what leave to withdraw meant and said an inmate wrote the letter for him and he did not know its contents because he could not read or write. The court allowed Huffman to withdraw and appointed Edward Mitchell to represent defendant.

¶ 28 In January 2023, Mitchell filed an amended successive postconviction petition, alleging: (1) defendant was unable to comprehend the legal proceedings, including the effect of his guilty plea, or actively participate in his defense; (2) trial counsel had minimal contact with defendant and failed to investigate his ability to understand English or the legal proceedings; (3) the failure of the trial court and counsel to determine defendant's ability to understand the proceedings and provide him with an interpreter resulted in violations of his constitutional rights, including the right to the effective assistance of counsel; and (4) the language barrier prevented defendant from understanding the principles of forfeiture. The petition did not allege the ineffectiveness of appellate counsel. Mitchell alleged defendant's late filing was not due to defendant's culpable negligence because defendant never had an interpreter to allow him to adequately communicate with previously appointed counsel and he was not able to understand

the specific and technical provisions of the law, so he was unaware of the time limits for filing. Mitchell attached defendant's academic records to the petition.

¶ 29 Mitchell filed a Rule 651(c) certificate, stating he consulted with defendant by mail, telephone, electronic means, or in person, examined the record and reports of all proceedings, including the guilty plea hearing, and made the necessary amendments to defendant's *pro se* successive petition to adequately present his contentions. The State did not file a new motion to dismiss but stood on its earlier motion to dismiss, arguing the amended petition was untimely, barred by *res judicata* and forfeiture, and did not show ineffective assistance of counsel.

¶ 30 The trial court provided defendant an interpreter for the hearing on the State's motion to dismiss. At the hearing, the State did not specifically argue the petition was untimely. However, the State told the court it was relying on the motion to dismiss filed in 2018. Mitchell argued defendant was deprived of the effective assistance of counsel because he had a limited understanding of English, initially told the court he understood the proceedings because he was nervous and afraid and would not have pled guilty to first degree murder had he understood the proceedings. Mitchell did not discuss the timeliness of the petition at the hearing.

¶ 31 The trial court filed a written order granting the State's motion to dismiss. The court first found the petition was untimely under section 122-1(c) of the Act. Applying dates pertaining to defendant's first postconviction petition, the court found the last date for defendant to file a petition under the Act was on June 28, 2011, but defendant did not file his petition until August 30, 2017. The court found defendant did not assert an actual-innocence claim or demonstrate the delay was not due to his culpable negligence to excuse the untimely filing. The court found defendant failed to address "in any meaningful way" the fact his petition was filed

outside the time limits. The court also found a delay occasioned by the erroneous advice of a “jailhouse lawyer” or ignorance of the law was insufficient to establish a lack of culpable negligence. In addition, the court found defendant’s claims were barred by principles of *res judicata* and forfeiture. Defendant’s *pro se* motion to reconsider was denied.

¶ 32 This appeal followed.

¶ 33 II. ANALYSIS

¶ 34 On appeal, defendant contends Mitchell rendered unreasonable assistance of postconviction counsel by (1) failing to refute the State’s claim the petition was untimely, (2) failing to argue the trial court denied defendant due process by allowing him to plead guilty without an interpreter, (3) failing to pursue defendant’s claim trial counsel was ineffective for failing to ensure he understood the guilty plea proceedings, and (4) failing to allege ineffective assistance of appellate counsel for failing to raise the claims on appeal.

¶ 35 Defendant first contends Mitchell rendered unreasonable assistance by failing to dispute the State’s contention the petition was untimely filed. Defendant argues, because he was filing a successive petition, he was not subject to the statutory limitation period in section 122-1(c) of the Act, and thus was not required to demonstrate the delay in filing his petition was not due to his culpable negligence. Instead, he argues he was only required to show cause and prejudice for leave to file under section 122-1(f) of the Act. In response, the State argues the petition was both untimely and defendant failed to show cause and prejudice. It argues the petition was properly dismissed under either test, so we need not reach defendant’s remaining claims.

¶ 36 A. Background Legal Principles

¶ 37 The Act provides a remedy for defendants who have suffered a substantial violation of their constitutional rights at trial. *People v. Pendleton*, 223 Ill. 2d 458, 471, 861 N.E.2d 999, 1007 (2006). The Act sets forth three stages of proceedings. *Pendleton*, 223 Ill. 2d at 471-72, 861 N.E.2d at 1007. At the first stage, the trial court independently reviews the defendant's postconviction petition and determines whether "the petition is frivolous or is patently without merit." 725 ILCS 5/122-2.1(a)(2) (West 2016). If it finds the petition is frivolous or patently without merit, the court must dismiss the petition. 725 ILCS 5/122-2.1(a)(2) (West 2016). If the court does not dismiss the petition, it proceeds to the second stage, where the court may appoint counsel for an indigent defendant. *Pendleton*, 223 Ill. 2d at 472, 861 N.E.2d at 1007. Defense counsel may amend the defendant's petition to ensure his or her contentions are adequately presented. *Pendleton*, 223 Ill. 2d at 472, 861 N.E.2d at 1007. Also at the second stage, the State may file a motion to dismiss the defendant's petition or an answer to it. *Pendleton*, 223 Ill. 2d at 472, 861 N.E.2d at 1008.

¶ 38 The State may seek a dismissal on any grounds. *People v. Bailey*, 2017 IL 121450, ¶ 26, 102 N.E.3d 114. If the State does not file a motion to dismiss, or if the trial court denies such a motion, the petition advances to the third stage, and the court holds a hearing at which the defendant may present evidence in support of his or her petition. *Pendleton*, 223 Ill. 2d at 472-73, 861 N.E.2d at 1008. At both the second and third stages of the postconviction proceedings, "the defendant bears the burden of making a substantial showing of a constitutional violation." *Pendleton*, 223 Ill. 2d at 473, 861 N.E.2d at 1008. A substantial showing means the allegations, if proven at an evidentiary hearing, would entitle the petitioner to relief. *People v. Domagala*, 2013 IL 113688, ¶ 35, 987 N.E.2d 767. We review *de novo* the court's dismissal of a postconviction petition at the second stage. *Pendleton*, 223 Ill. 2d at 473, 861 N.E.2d at 1008.

¶ 39 In regard to assistance of counsel, postconviction counsel must give the defendant a “reasonable level of assistance.” (Internal quotation marks omitted.) *People v. Flores*, 153 Ill. 2d 264, 276, 606 N.E.2d 1078, 1084 (1992). To that end, Illinois Supreme Court Rule 651(c) (eff. July 1, 2017) provides as follows:

“The record *** shall contain a showing, which may be made by the certificate of petitioner’s [appointed] attorney, that the attorney has consulted with petitioner by phone, mail, electronic means[,] or in person to ascertain his or her contentions of deprivation of constitutional rights, has examined the record of the proceedings at the trial, and has made any amendments to the petitions filed *pro se* that are necessary for an adequate presentation of petitioner’s contentions.”

¶ 40 The filing of a Rule 651(c) certificate raises a presumption that postconviction counsel provided reasonable assistance. *People v. Profit*, 2012 IL App (1st) 101307, ¶ 19, 974 N.E.2d 813. “It is well established that the duty to shape the defendant’s claims into appropriate legal form ‘does not require postconviction counsel to advance frivolous or spurious claims on defendant’s behalf.’ ” *People v. Blake*, 2022 IL App (2d) 210154, ¶ 15, 214 N.E.3d 217 (quoting *People v. Greer*, 212 Ill. 2d 192, 205, 817 N.E.2d 511, 519 (2004)). Frivolous or patently nonmeritorious claims are not “necessary” within the meaning of Rule 651. *Greer*, 212 Ill. 2d at 205, 817 N.E.2d at 519. We decide *de novo* whether the Rule 651(c) certificate is rebutted. See *Blake*, 2022 IL App (2d) 210154, ¶ 15.

¶ 41 Regarding timeliness, Section 122-1(c) of the Act provides:

“When a defendant has a sentence other than death, no proceedings under this Article shall be commenced more than 6 months after the conclusion of proceedings in the United States Supreme Court, unless the petitioner alleges facts

showing that the delay was not due to his or her culpable negligence. If a petition for *certiorari* is not filed, no proceedings under this Article shall be commenced more than 6 months from the date for filing a *certiorari* petition, unless the petitioner alleges facts showing that the delay was not due to his or her culpable negligence. If a defendant does not file a direct appeal, the post-conviction petition shall be filed no later than 3 years from the date of conviction, unless the petitioner alleges facts showing that the delay was not due to his or her culpable negligence.” 725 ILCS 5/122-1(c) (West 2016).

Claims of actual innocence are also excepted from the time limitations in section 122-1(c). 725 ILCS 5/122-1(c) (West 2016).

¶ 42 Additionally, the Act contemplates the filing of only one postconviction petition. *Bailey*, 2017 IL 121450, ¶ 15. Specifically, section 122-3 of the Act (725 ILCS 5/122-3 (West 2016)) provides any claim of a substantial denial of constitutional rights not raised in the original or an amended petition is forfeited. Section 122-1(f) of the Act represents an exception to that forfeiture rule. See *Bailey*, 2017 IL 121450, ¶ 15. It provides the following:

“Only one petition may be filed by a petitioner under this Article without leave of the 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. 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 2016).

For a defendant to obtain leave to file a successive postconviction petition, both prongs of the cause and prejudice test must be satisfied. *People v. Guerrero*, 2012 IL 112020, ¶ 15, 963 N.E.2d 909.

¶ 43 B. Forfeiture Issues

¶ 44 Pointing to section 122-1(f), defendant argues successive petitions are not subject to the time limitation in section 122-1(c). Thus, he contends he was not required to show a lack of culpable negligence to excuse his late filing, and instead was required to show cause and prejudice under section 122-1(f). Therefore, he asserts Mitchell rendered ineffective assistance by failing to pursue such an argument in the trial court.

¶ 45 The State argues, even if the cause-and-prejudice standard under section 122-1(f) applies, defendant failed to show cause and prejudice to file a successive petition. Thus, any argument Mitchell might have made on the matter would have been futile. In the alternative, the State notes the trial court did not make findings concerning cause and prejudice and suggests a remand for such findings would be appropriate.

¶ 46 In response, defendant contends the State forfeited its argument concerning cause and prejudice by failing to previously raise it in the trial court. Defendant further argues the trial court implicitly found cause and prejudice for the filing when it advanced the petition to the second stage.

¶ 47 We recognize the record does not contain any explicit discussion of cause and prejudice by the trial court when it advanced the successive petition to second-stage proceedings. However, our supreme court has indicated, in advancing a successive petition to the second

stage, the trial court necessarily finds the defendant satisfied the cause-and-prejudice standard. See *People v. Tidwell*, 236 Ill. 2d 150, 161, 923 N.E.2d 728, 734 (2010) (“[A] successive postconviction petition is not considered ‘filed’ *** and further proceedings will not follow, until leave is granted, a determination dependent upon a defendant's satisfaction of the cause-and-prejudice test.”); see also *People v. Sanders*, 2016 IL 118123, ¶ 25, 47 N.E.3d 237 (recognizing a trial court may rule on a successive postconviction petition where leave to file has not been sought when documents submitted by petitioner supply an adequate basis to determine whether the petition has sufficiently alleged cause and prejudice); *People v. Campbell*, 2021 IL App (1st) 182636-U, ¶ 43 (cited as persuasive authority under Illinois Supreme Court Rule 23) (addressing cause and prejudice when the issue was not discussed by the trial court or raised in the State’s motion to dismiss.) Thus, the record here reflects the trial court found cause and prejudice with respect to defendant’s claims, granted the motion for leave to file the successive petition, and advanced the successive petition to second-stage proceedings before the State moved to dismiss. See *Campbell*, 2021 IL App (1st) 182636-U, ¶ 43.

¶ 48 Although the trial court necessarily found cause and prejudice to advance defendant’s claims to second-stage proceedings, we disagree our court is precluded from reviewing that determination. The question of cause and prejudice remains applicable through all three stages of a successive petition, and the State can seek dismissal of the petition on any grounds, including the defendant’s failure to prove cause and prejudice, at any stage of the proceedings. See *People v. Bailey*, 2017 IL 121450, ¶ 26, 102 N.E.3d 114; *People v. Johnson*, 2019 IL App (1st) 153204, ¶ 35, 153 N.E.3d 156; *Campbell*, 2021 IL App (1st) 182636-U, ¶ 44. “Thus, we may review cause and prejudice on appeal from a second-stage dismissal.” *Campbell*, 2021 IL App (1st) 182636-U, ¶ 44 (citing *Johnson*, 2019 IL App (1st) 153204, ¶ 37).

¶ 49 Moreover, although the State did not make any cause-and-prejudice argument in its motion to dismiss and the record does not reflect an explicit discussion of cause and prejudice by the trial court, our review is *de novo*, and we may affirm a trial court’s dismissal of a postconviction petition on any grounds substantiated by the record. *People v. Stafford*, 2018 IL App (4th) 140309-B, ¶ 43, 107 N.E.3d 968; *Campbell*, 2021 IL App (1st) 182636-U, ¶ 45. Accordingly, we review whether defendant established cause and prejudice for filing his successive petition. See *Campbell*, 2021 IL App (1st) 182636-U, ¶ 46.

¶ 50 C. Cause and Prejudice

¶ 51 Guided by our supreme court’s decision in *Lander*, we find defendant failed to allege sufficient facts to show cause. In *Lander*, applying the culpable negligence standard for the timely filing of a first postconviction petition, the supreme court rejected the defendant’s claim he was not culpably negligent for the untimely filing of his postconviction petition because he relied on the erroneous advice of a prison law clerk and several “jailhouse lawyers” as to the filing deadline. *People v. Lander*, 215 Ill. 2d 577, 586-87, 831 N.E.2d 596, 601-02 (2005). In doing so, the court distinguished *People v. Rissley*, 206 Ill. 2d 403, 795 N.E.2d 174 (2003), in which the defendant was not culpably negligent for the late filing of his petition when he reasonably relied on the advice of his appellate attorney, who had obvious expertise in legal matters and criminal appeals. *Lander*, 215 Ill. 2d at 587-88, 831 N.E.2d at 602 (citing *Rissley*, 206 Ill. 2d at 421, 795 N.E.2d at 182). Unlike in *Rissley*, the defendant in *Lander* failed to allege the people he relied on for advice were hired to assist inmates with postconviction matters or “had any particular training in postconviction matters providing them with specialized knowledge of the filing deadline for a postconviction petition.” *Lander*, 215 Ill. 2d at 588, 831 N.E.2d at 602.

¶ 52 The supreme court in *Lander* further noted it was well settled all citizens are charged with knowledge of the law and ignorance of the law or legal rights will not excuse a delay in filing a lawsuit. Thus, the sole obligation of knowing the time requirements for filing a postconviction petition remained with the defendant. The defendant's entrustment of this responsibility to jailhouse lawyers, a prison law clerk, and a law librarian who had no proven specialized knowledge in postconviction matters showed an indifference to the consequences likely to follow from his actions. *Lander*, 215 Ill. 2d at 588-89, 831 N.E.2d at 603.

¶ 53 Other courts have similarly applied *Lander*. See, e.g., *People v. Cruz*, 2013 IL App (1st) 091944, ¶ 21, 997 N.E.2d 264; *People v. Williams*, 394 Ill. App. 3d 236, 244, 914 N.E.2d 641, 649-50 (2009). In particular, in *Williams*, the court applied *Lander* and the cause-and-prejudice test to determine the defendant failed to show his reliance on a fellow inmate and prison law clerk in the preparation of his first postconviction petition was reasonable. Thus, the defendant failed to show cause for filing a successive petition. *Williams*, 394 Ill. App. 3d at 245, 914 N.E.2d at 650.

¶ 54 Here, in alleging he had cause to file a successive petition, defendant made conclusory statements that his limited use of English, lack of an interpreter, and inability to understand the law prevented him from including his claims in his first postconviction petition. Additionally, he alleged he relied on another inmate to prepare his first petition. But defendant did not allege a reasonable basis to believe the other inmate had any expertise in filing postconviction petitions. Defendant also did not allege any inability to have documents prepared by another inmate translated or read to him by a third party in order for him to verify the accuracy of the documents or the claims that were included. Instead, defendant merely states the conclusion he was unable to read the documents. In addition, it is well settled that ignorance of

the law is not a valid excuse. Thus, we find *Lander* controlling and conclude defendant failed to sufficiently allege cause for filing his successive petition.

¶ 55 Accordingly, albeit for different reasons than the trial court applied, we conclude the court did not err in dismissing the successive petition. Further, counsel did not render unreasonable assistance because, even if counsel had argued the trial court applied the wrong test, the argument would ultimately have been futile. “Because we have resolved defendant’s appeal on his failure to establish cause, we need not address the prejudice prong of the cause-and-prejudice test.” *People v. Jackson*, 2022 IL App (4th) 200182-U, ¶ 37 (cited as persuasive authority under Supreme Court Rule 23) (citing *People v. Moore*, 2020 IL App (4th) 190528, ¶ 14, 170 N.E.3d 204 (“For a defendant to obtain leave to file a successive postconviction petition, both prongs of the cause-and-prejudice test must be satisfied.”)).

¶ 56 III. CONCLUSION

¶ 57 For the reasons stated, we affirm the trial court’s judgment.

¶ 58 Affirmed.