

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).

2021 IL App (4th) 210035-U

NO. 4-21-0035

IN THE APPELLATE COURT

OF ILLINOIS

FOURTH DISTRICT

FILED

December 23, 2021
Carla Bender
4th District Appellate
Court, IL

THE PEOPLE OF THE STATE OF ILLINOIS,)	Appeal from the
Plaintiff-Appellee,)	Circuit Court of
v.)	Macon County
ANTHONY L. MABON,)	No. 12CF1287
Defendant-Appellant.)	
)	Honorable
)	Jeffrey S. Geisler,
)	Judge Presiding.

JUSTICE TURNER delivered the judgment of the court.
Justices DeArmond and Steigmann concurred in the judgment.

ORDER

¶ 1 *Held:* The appellate court granted appellate counsel's motion to withdraw and affirmed the trial court's denial of defendant's petition for leave to file a successive postconviction petition.

¶ 2 On October 13, 2020, defendant, Anthony L. Mabon, filed a motion for leave to file a successive postconviction petition. On December 11, 2020, the trial court denied defendant's motion, finding defendant did not establish cause and prejudice to file his successive petition. This appeal followed. The Office of the State Appellate Defender (OSAD) was appointed to represent defendant on appeal. On July 9, 2021, OSAD filed a motion for leave to withdraw as counsel on appeal pursuant to Illinois law, contending an appeal in this case would be without merit. On August 20, 2021, defendant filed a response to OSAD's motion to withdraw. Then, on September 27, 2021, the State filed its brief. We grant OSAD's motion to withdraw and affirm the denial of defendant's petition for leave to file a successive

postconviction petition.

¶ 3

I. BACKGROUND

¶ 4

In June 2015, a jury found defendant guilty of four counts of aggravated criminal sexual abuse (720 ILCS 5/11-1.60(d) (West 2012)) to A.K., a 13-year-old, developmentally-disabled girl. In August 2015, the trial court sentenced defendant to consecutive 13-year sentences on each of the four counts.

¶ 5

On direct appeal, defendant argued the State committed prosecutorial misconduct by (1) introducing evidence defendant impregnated his daughter, D.D.; (2) asking the trial court to send the child's picture to the jury room during the jury's deliberations; and (3) introducing evidence defendant threatened to shoot D.D.'s boyfriend if he continued to see D.D. *People v. Mabon*, 2017 IL App (4th) 150857-U, ¶ 2. Defendant also argued his trial counsel was constitutionally ineffective because he presented evidence defendant purportedly pushed D.D. down a flight of stairs, attempting to cause a miscarriage, and threatened to kill D.D. if she told anyone defendant was the baby's father. *Mabon*, 2017 IL App (4th) 150857-U, ¶ 2. Finally, defendant argued he was denied a fair trial by the cumulative effect of the alleged errors. *Mabon*, 2017 IL App (4th) 150857-U, ¶ 2.

¶ 6

This court held defendant essentially conceded the State could introduce evidence defendant had sex with his daughter. *Mabon*, 2017 IL App (4th) 150857-U, ¶ 40. Information regarding D.D.'s pregnancy was evidence defendant had sex with his daughter. *Mabon*, 2017 IL App (4th) 150857-U, ¶ 40. The photograph of the child was further evidence of defendant's sexual conduct with his daughter. *Mabon*, 2017 IL App (4th) 150857-U, ¶ 41. This court found no merit in defendant's argument the State engaged in prosecutorial misconduct. *Mabon*, 2017 IL App (4th) 150857-U, ¶ 45. As for defendant's claim of ineffective assistance of counsel, this

court did not find defense counsel's representation fell below an objective standard of reasonableness. Further, even if defense counsel's performance was deficient, this court found it difficult to see how defendant could have been prejudiced based on all the evidence. *Mabon*, 2017 IL App (4th) 150857-U, ¶ 52. This court also found no cumulative error. *Mabon*, 2017 IL App (4th) 150857-U, ¶ 54. As a result, this court affirmed defendant's conviction. *Mabon*, 2017 IL App (4th) 150857-U, ¶ 56.

¶ 7 In September 2018, defendant filed his *pro se* postconviction petition claiming he received ineffective assistance of counsel and was actually innocent. Defendant alleged his trial counsel was ineffective for failing to represent him during the plea bargaining process and for failing to properly cross-examine Detective Borowczyk with regard to the detective's examination of defendant's cell phone. Further, according to defendant, he asked his trial counsel several times to ask the State about a plea deal but counsel never did. Defendant also alleged the trial court violated his right to receive a fair sentence because the court inaccurately stated defendant and the victim were related. Defendant's actual innocence claim alleged the State failed to prove his guilt beyond a reasonable doubt. On October 26, 2018, the trial court summarily dismissed defendant's postconviction petition as frivolous and without merit.

¶ 8 Defendant appealed, and OSAD was appointed to represent defendant on appeal. OSAD then filed a motion to withdraw as defendant's counsel on appeal. In defendant's response to OSAD's motion for leave to withdraw as appellate counsel, defendant raised three new issues: (1) the trial court failed to correctly admonish him of the minimum and maximum sentences he faced; (2) his trial attorney told him his sentences would not be consecutive if he was found guilty after a trial; (3) the trial court erroneously stated defendant "sexually assaulted" A.K. *People v. Mabon*, 2020 IL App (4th) 180792-U, ¶ 21. Citing *People v. Jones*, 213 Ill. 2d

498, 508, 821 N.E.2d 1093, 1099 (2004), this court stated it could not consider these claims because they were not included in defendant’s postconviction petition. *Mabon*, 2020 IL App (4th) 180792-U, ¶ 21.

¶ 9 As to the claims defendant raised in his postconviction petition, citing *People v. English*, 2013 IL 112890, ¶ 22, 987 N.E.2d 371, this court noted any claim decided on direct appeal or that could have been decided on direct appeal may not be raised in a postconviction petition because of *res judicata* and forfeiture, respectively. *Mabon*, 2020 IL App (4th) 180792-U, ¶ 13. This court then addressed defendant’s arguments as follows. Defendant’s claim the State did not prove his guilt beyond a reasonable doubt—which defendant called an actual innocence claim without presenting any new evidence—was forfeited because it could have been raised on direct appeal. *Mabon*, 2020 IL App (4th) 180792-U, ¶ 15. As for defendant’s claim his trial counsel was ineffective for not trying to reach a plea agreement with the State, this court noted defendant failed to present any evidence he was prejudiced by the alleged failure because defendant’s claim he would have accepted any offer the State made was pure speculation. *Mabon*, 2020 IL App (4th) 180792-U, ¶ 17-18. Next, defendant’s claim his trial counsel was ineffective for not properly cross-examining Detective Borowczyk did not make sense because the State did not call the detective as a witness. *Mabon*, 2020 IL App (4th) 180792-U, ¶ 19. Finally, this court determined defendant’s claim he was denied a “fair sentence” because the trial court incorrectly stated defendant and the child victim were related was forfeited because the issue could have been raised in defendant’s direct appeal. *Mabon*, 2020 IL App (4th) 180792-U, ¶ 20. Like OSAD, this court concluded defendant’s appeal was meritless. *Mabon*, 2020 IL App (4th) 180792-U, ¶ 11.

¶ 10 On October 13, 2020, defendant filed a motion for leave to file a successive

postconviction petition. Defendant cited his lack of legal knowledge, limited access to the law library, and lack of counsel as cause for failing to bring his claims in his initial postconviction petition. He alleged he was prejudiced because the State asked for “permissive mandatory consecutive sentencing based upon an improper aggravating factor.” According to defendant, at the sentencing hearing, the trial court stated defendant had sexually assaulted the victim four times, instead of sexually abused the victim. In addition, the court made incorrect statements indicating defendant and the victim were related. Further, defendant argued the State engaged in prosecutorial misconduct at the hearing on defendant’s motion to reconsider sentence by indicating the State did not recall the trial court commenting the victim and defendant were related at the sentencing hearing. According to defendant, the prosecutor should have said she did not know whether the court made the comment in question. Defendant also argued his trial counsel was ineffective for failing to argue the trial court made improper statements.

¶ 11 On December 11, 2020, the trial court denied defendant’s motion for leave to file a successive petition. This appeal followed.

¶ 12 II. ANALYSIS

¶ 13 “When the circuit court has not held an evidentiary hearing, this court reviews *de novo* the denial of a defendant’s motion for leave to file a successive postconviction petition.” *People v. Ames*, 2019 IL App (4th) 170569, ¶ 11, 161 N.E.3d 225. The Post-Conviction Hearing Act (Postconviction Act) (725 ILCS 5/122-1 *et seq.* (West 2020)) contemplates the filing of only one postconviction petition and “[a]ny claim of substantial denial of constitutional rights not raised in the original or an amended petition is waived” (725 ILCS 5/122-3 (West 2020)) unless “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

2020)). A defendant must establish both cause and prejudice. *Ames*, 2019 IL App (4th) 170569,

¶ 12. We note defendant does not make an actual innocence claim.

¶ 14 Defendant's allegations regarding cause and prejudice lack merit. Ignorance of the law does not satisfy the Postconviction Act's cause requirement. *People v. Evans*, 2013 IL 113471, ¶ 13, 989 N.E.2d 1096. Further, as to the claims defendant wanted to raise in a successive petition, we note defendant argued in his first postconviction petition he was denied a "fair sentence" because the trial court stated defendant and the child victim were related. This court found defendant could not raise this issue in his postconviction petition because he did not raise this argument on direct appeal or argue his appellate counsel was ineffective for failing to do so. *Mabon*, 2020 IL App (4th) 180792-U, ¶ 20. The same would have been true with regard to the other claims defendant asked to pursue in a successive postconviction petition, *i.e.*, the trial court inaccurately stated defendant sexually assaulted, instead of sexually abused, the victim; his trial counsel was ineffective for not pointing out the trial court's errors; and the State engaged in prosecutorial misconduct for stating it did not recall the court stating the defendant and victim were related at the sentencing hearing. All of these issues could have been raised on direct appeal, and defendant does not allege his direct appeal appellate counsel was ineffective for not doing so. As a result, defendant cannot establish both cause and prejudice for his failure to raise these issues in his initial postconviction petition.

¶ 15 III. CONCLUSION

¶ 16 For the reasons stated, we allow OSAD's motion to withdraw as counsel on appeal and affirm the denial of defendant's motion for leave to file a successive postconviction petition.

¶ 17 Affirmed.