

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).

2022 IL App (4th) 210413-U

NO. 4-21-0413

IN THE APPELLATE COURT

OF ILLINOIS

FOURTH DISTRICT

FILED

August 15, 2022

Carla Bender

4th District Appellate
Court, IL

THE PEOPLE OF THE STATE OF ILLINOIS,)	Appeal from the
Plaintiff-Appellee,)	Circuit Court of
v.)	Champaign County
JOANIS M. BRADLEY,)	No. 07CF1458
Defendant-Appellant.)	
)	Honorable
)	Randall B. Rosenbaum,
)	Judge Presiding.

PRESIDING JUSTICE KNECHT delivered the judgment of the court.
Justices Turner and Doherty concurred in the judgment.

ORDER

¶ 1 *Held:* We grant appointed counsel's motion to withdraw and affirm the trial court's judgment where no meritorious issues could be raised on appeal.

¶ 2 On March 15, 2021, defendant, Joanis M. Bradley, filed a motion for leave to file a successive postconviction petition. On June 10, 2021, the trial court denied defendant's motion, finding defendant did not establish cause to file his successive petition.

¶ 3 On appeal, the Office of the State Appellate Defender (OSAD) moves to withdraw its representation of defendant, contending the appeal is without merit. We grant OSAD's motion and affirm the trial court's judgment.

¶ 4 I. BACKGROUND

¶ 5 This court has set forth the underlying facts of this case in defendant's prior appeals. See *People v. Bradley*, 391 Ill. App. 3d 1134, 982 N.E.2d 995 (2009) (table) (unpublished order under Supreme Court Rule 23); *People v. Bradley*, 2011 IL App (4th)

100580-U; *People v. Bradley*, 2017 IL App (4th) 150527, 85 N.E.3d 591. Accordingly, we will set forth only those facts necessary to resolve the issue presented in this case.

¶ 6 A. Jury Trial and Direct Appeal

¶ 7 In August 2007, the State charged defendant with first degree murder (720 ILCS 5/9-1(a)(2) (West 2006)). In a February 2008 jury trial, the evidence showed defendant told Tyrone Leviston defendant intended to rob Christopher Napier and showed Leviston the gun he was going to use. Defendant told another witness he wanted to rob Napier of marijuana. On August 24, 2007, defendant went to Napier's apartment. He and Napier talked in the kitchen and then went outside. Napier returned to the apartment, grabbed a small paring knife, mentioned a gun, and said something to the effect of "I'm going to get him" or "I'm going to settle this." Napier ran back outside, and Napier's sister and his girlfriend saw defendant shoot Napier before running away. Various witnesses testified there were two to six gunshots. Two casings were found at the scene and one was found in defendant's car.

¶ 8 The trial court instructed the jury pursuant to Illinois Pattern Jury Instruction 7.02, stating in order to find defendant guilty of first degree murder, the jury must find the State proved beyond a reasonable doubt, "[t]hat during the commission of the offense the Defendant personally discharged a firearm that proximately caused the death of Christopher Napier." See Illinois Pattern Jury Instructions, Criminal, No. 7.02 (4th ed. 2000). The jury found defendant guilty of first degree murder. On April 11, 2008, the court sentenced defendant to 50 years' imprisonment for first degree murder plus a 25-year firearm enhancement, for a total of 75 years' imprisonment.

¶ 9 On direct appeal, this court affirmed defendant's conviction and sentence, rejecting defendant's argument his sentence was excessive. See *People v. Bradley*, 391 Ill. App. 3d 1134, 982 N.E.2d 995 (2009) (table) (unpublished order under Supreme Court Rule 23).

¶ 10 B. Initial Postconviction Petition

¶ 11 In May 2010, defendant filed a *pro se* postconviction petition pursuant to the Post-Conviction Hearing Act (Act) (725 ILCS 5/122-1 *et seq.* (West 2008)). In his petition, defendant alleged various claims of ineffective assistance of counsel. In June 2010, the trial court summarily dismissed defendant's petition as frivolous and patently without merit. Defendant appealed, and this court affirmed the summary dismissal. See *People v. Bradley*, 2011 IL App (4th) 100580-U, ¶ 17.

¶ 12 C. Petition for Relief from Judgment

¶ 13 In April 2015, defendant filed a *pro se* petition for relief from judgment pursuant to section 2-1401 of the Code of Civil Procedure (735 ILCS 5/2-1401 (West 2014)). In his petition, defendant alleged his 25-year firearm enhancement was void because "725 ILCS 5/111-3 (c-5) and *Apprendi v. New Jersey*, 530 U.S. 466 *** Prohibits said enhancement without a specific finding from the trier of fact via a verdict form that it found the aggravating factor beyond a reasonable doubt, Seperate [*sic*] from the underlying offense of first degree murder." The trial court granted the State's motion to dismiss. On appeal, this court reversed, finding the trial court prematurely granted the State's motion to dismiss. We remanded the matter to the trial court in order to allow defendant the opportunity to file a response to the State's motion to dismiss. See *People v. Bradley*, 2017 IL App (4th) 150527 ¶¶ 19, 21. Following remand, defendant filed a motion withdrawing his petition for relief from judgment. On January 4, 2018, the trial court granted defendant's motion.

¶ 14

D. Leave to File a Successive Postconviction Petition

¶ 15

On March 15, 2021, defendant filed a *pro se* motion for leave to file a successive postconviction petition, attaching his petition to the motion. Defendant asserted, in relevant part, he was denied his sixth amendment and due process rights where the trial court imposed a 25-year firearm enhancement, even though the jury made no finding defendant personally discharged the firearm which proximately caused Napier's death. Defendant asserted there was cause for his failure to bring his claim in his original postconviction petition because the United States Supreme Court had not yet decided *Alleyne v. United States*, 570 U.S. 99 (2013), at the time defendant filed his initial postconviction petition. With regard to prejudice, defendant asserted the 25-year firearm enhancement changed the sentencing range for murder from 20 to 60 years' imprisonment to 45 years' to life imprisonment.

¶ 16

On June 10, 2021, the trial court issued a written order denying defendant leave to file a successive postconviction petition. The court explained, while *Alleyne* was decided three years after defendant had filed his initial postconviction petition, "*Alleyne* followed a long line of cases that held the same thing, that a jury must determine facts that would extend the normal sentencing range." The court specifically noted the significance of *Apprendi* which "caused all jurisdictions to change their laws, Illinois included. *See People v. Green*, 225 Ill. 2d 612 (2007), issued 3 years before [d]efendant filed his original Petition." The court concluded because *Apprendi* was decided 10 years before defendant filed his original petition, he failed to establish cause for failing to raise the issue in his original postconviction petition. Additionally, the court noted defendant's contention with regard to the 25-year firearm enhancement, "that the judge imposed it and the jury never decided the factual issue" was belied by the record. Defendant filed a timely notice of appeal from the court's denial of his motion.

¶ 17 In July 2021, this court appointed OSAD to represent defendant on appeal. In December 2021, OSAD filed a motion for leave to withdraw as counsel on appeal pursuant to Illinois law, contending the appeal is without merit. In February 2022, defendant filed a response to OSAD's motion to withdraw. Then, in March 2022, the State filed its brief.

¶ 18 II. ANALYSIS

¶ 19 OSAD contends no meritorious argument can be made the trial court erred in denying defendant's motion for leave to file a successive postconviction petition. The State argues the court did not err in denying defendant's motion because defendant did not demonstrate cause or prejudice. Defendant asserts he has demonstrated cause and prejudice because *Alleyne* had not yet been decided when he filed his initial postconviction petition, and therefore he was unable to challenge his unconstitutional sentence.

¶ 20 The Act provides a means to collaterally attack a criminal conviction on the basis of a substantial denial of a defendant's state or federal constitutional rights. *People v. Hodges*, 234 Ill. 2d 1, 9, 912 N.E.2d 1204, 1208 (2009). Generally, a defendant may only file one postconviction petition without leave of the court. 725 ILCS 5/122-1(f) (West 2020). Any claim not raised in the original or amended petition is forfeited. *Id.* § 122-3. This statutory bar to a successive petition will only be relaxed when fundamental fairness so requires. *People v. Pitsonbarger*, 205 Ill. 2d 444, 459, 793 N.E.2d 609, 621 (2002). To determine whether fundamental fairness requires relaxation of the statutory bar, the reviewing court employs the "cause-and-prejudice test." *Id.* To demonstrate cause, a defendant must identify " 'an objective factor that impeded his or her ability to raise a specific claim during his or her initial post-conviction proceedings.' " *People v. Wilson*, 2014 IL App (1st) 113570, ¶ 31, 19 N.E.3d 142 (quoting 725 ILCS 5/122-1(f) (West 2010)). Prejudice is an error so infectious to the

proceedings the resulting conviction violates due process. *Pitsonbarger*, Ill. 2d at 464. Where it is clear defendant could not have succeeded on a claim had it been included in his initial postconviction petition, he cannot show prejudice. *Id.* at 469-70. We review the denial of a motion for leave to file a successive petition alleging cause and prejudice *de novo*. See, e.g., *People v. Robinson*, 2020 IL 123849, ¶ 39.

¶ 21 In *Apprendi*, the Court held “[o]ther than the fact of a prior conviction, any fact that increases the penalty for a crime beyond the prescribed statutory maximum must be submitted to a jury, and proved beyond a reasonable doubt.” *Apprendi*, 530 U.S. at 490. *Alleyne* extended this rule to facts which increase the mandatory minimum sentence for an offense. While *Alleyne* was decided three years after defendant’s conviction, defendant’s argument “any fact that increases the mandatory minimum sentence is an element of the offense that must be submitted to the jury” was not a new or novel argument. See *People v. Guerrero*, 2012 IL 112020, ¶ 20. Rather, *Alleyne* was an extension of *Apprendi* and the Court decided *Apprendi* 10 years before defendant filed his initial postconviction petition. Therefore, defendant cannot establish cause for failing to assert this argument in his initial postconviction petition.

¶ 22 OSAD argues even if defendant were to establish cause for filing a successive postconviction petition, he would be unable to establish prejudice. In *People v. De La Paz*, 204 Ill. 2d 426, 433-39 (2003), our supreme court held *Apprendi* does not apply retroactively to cases on collateral review. Similarly, *Alleyne* does not apply retroactively. See *People v. Johnson*, 2015 IL App (2d) 140388, ¶ 8 (“The rule announced in *Alleyne* is no more a watershed rule than was the rule announced in *Apprendi*.”). Therefore, because *Alleyne* does not apply retroactively to cases on collateral review, defendant cannot show prejudice.

¶ 23 Moreover, even if *Alleyne* applied retroactively, it would not render defendant's sentence unconstitutional. OSAD asserts the trial court was correct in concluding defendant's allegation the jury made no finding he personally discharged the firearm which caused Napier's death to be contradicted by the trial record. We agree and find defendant's contention "the trial court found and not the jury that [defendant] had personally discharged a firearm causing the death in connection with a crime of violence" is belied by the record. The record reveals the court instructed the jury pursuant to Illinois Pattern Jury Instruction 7.02, which stated in order to find defendant guilty of first degree murder, it must find the State proved beyond a reasonable doubt "that during the commission of the offense, the defendant personally discharged a firearm that proximately caused the death of Christopher Napier." See Illinois Pattern Jury Instructions, Criminal, No. 7.02 (4th ed. 2000). The jury subsequently found defendant guilty of first degree murder.

¶ 24 We agree with OSAD no meritorious argument can be made the trial court erred in denying defendant leave to file a successive postconviction petition.

¶ 25 III. CONCLUSION

¶ 26 For the reasons stated, we grant OSAD's motion to withdraw and affirm the trial court's judgment.

¶ 27 Affirmed.