2022 IL App (5th) 190520-U

NO. 5-19-0520

IN THE

APPELLATE COURT OF ILLINOIS

FIFTH DISTRICT

THE PEOPLE OF THE STATE OF ILLINOIS,	)	Appeal from the
	)	Circuit Court of
Plaintiff-Appellee,	)	St. Clair County.
	)	
v.	)	No. 02-CF-774
	)	
JERID W. EDWARDS,	)	Honorable
	)	Julie K. Katz,
Defendant-Appellant.	)	Judge, presiding.

JUSTICE VAUGHAN delivered the judgment of the court.
Justices Welch and Barberis concurred in the judgment.

ORDER

¶ 1 *Held*: Where defendant failed to meet the cause-and-prejudice test, the circuit court did not err in denying him leave to file a successive postconviction petition, and since any argument to the contrary would lack merit, we grant appointed appellate counsel leave to withdraw.

¶ 2 Defendant, Jerid W. Edwards, appeals from an order denying his *pro se* motion for leave to file a successive petition for postconviction relief. His appointed appellate counsel, the Office of the State Appellate Defender (OSAD), concluded this appeal lacks merit. On that basis, OSAD filed with this court a motion for leave to withdraw as counsel (see *Pennsylvania v. Finley*, 481 U.S. 551 (1987)), along with a legal memorandum in support of the motion. OSAD served defendant with a copy of its *Finley* motion and memorandum. This court provided defendant an opportunity to file a response to OSAD's motion or explain why this appeal has merit, but

defendant did not take advantage of the opportunity. This court concludes that OSAD's assessment of the instant appeal is correct. Therefore, we grant OSAD's *Finley* motion to withdraw and affirm the order denying defendant's motion for leave to file a successive postconviction petition.

¶ 3 BACKGROUND

¶ 4 In 2002, a grand jury charged defendant with first degree murder based on the accusation that he shot Daniel Spratt, with the intent to kill or do great bodily harm. At the time of the shooting, in June 2002, defendant was 17 years old. The offense carried a sentence of 20 to 60 years in prison. 730 ILCS 5/5-8-1(a)(1)(a) (West 2002).

¶ 5 On November 10, 2004, defendant, who was then 19 years old, along with his defense attorney and an assistant state's attorney, appeared before the circuit court. The parties informed the court that defendant agreed to plead guilty in exchange for a sentence of imprisonment for 22 years. The prosecutor added that the truth-in-sentencing provisions applied.

¶ 6 In response to queries from the judge, defendant indicated that he was fully satisfied with his attorney's representation, and he did not need additional time to confer with counsel. The court thoroughly admonished defendant pursuant to Illinois Supreme Court Rule 402(a) (eff. July 1, 1997). Defendant indicated his understanding of the admonishment and stated he did not wish to have a trial.

¶ 7 The State presented a factual basis, stating that "[i]n the early morning hours" of June 4, 2002, defendant walked into a convenience store and fired a gun, shooting Daniel Spratt five times, thrice in the back and twice in the front, resulting in Spratt's death. The court found this factual basis sufficient. See Ill. S. Ct. R. 402(c) (eff. July 1, 1997). Defendant, in answer to the court's questions, indicated that nobody used force or threats, or made any promises, in order to induce him to plead guilty. Defendant also indicated that he did not have any questions about his plea.

Thereafter, defendant pled guilty. The court found defendant's plea of guilty was knowingly and voluntarily made, and accepted the plea. See Ill. S. Ct. R. 402(b) (eff. July 1, 1997).

¶ 8 The parties waived preparation of a presentence investigation report and stipulated to defendant's juvenile adjudications, in three different delinquency files, for robbery, retail theft under $150, and unlawful possession of a controlled substance. In accordance with the parties' agreement, the court sentenced defendant to 22 years' imprisonment, noting that defendant was not entitled to good-conduct credit and would serve 100% of his sentence. Finally, the court admonished defendant about his appeal rights. In response to the court's queries, defendant indicated that he understood his appeal rights, and had no questions about his right to appeal, or anything else.

¶ 9 Defendant did not move to withdraw his plea. He did not otherwise attempt an appeal from the conviction.

¶ 10 In June 2005, approximately seven months after the plea and sentencing, defendant filed a *pro se* petition for postconviction relief. He claimed that his guilty plea was involuntary because plea counsel misled him about the consequences of his plea and the availability of a self-defense instruction. He further claimed the circuit court failed to properly admonish him before accepting his plea. The circuit court found that defendant stated the gist of a claim and appointed postconviction counsel. Through counsel, defendant filed a motion to withdraw his postconviction petition. The court granted his motion in January 2006. Defendant did not seek to refile or reinstate his petition.

¶ 11 Nearly 14 years later, in October 2019, defendant filed a *pro se* "motion to ask the court for leave to file a petition for relief from judgement [*sic*] and/or in the alternative petition for successive post-conviction relief." The circuit court entered an order finding that "the two types

of petitions cannot be combined into one petition" because different procedures apply to the motions. The court dismissed defendant's motion without prejudice and granted him "leave to re-file one or both actions in separate petitions."

¶ 12 In November 2019, defendant filed the motion that is the subject of the instant appeal—his *pro se* motion for leave to file a successive postconviction petition. The motion was only a few sentences in length and alleged that defendant should be allowed to file a successive postconviction petition because Public Act 101-440 (Pub. Act 101-440, § 5 (eff. Jan. 1, 2020)) had recently amended section 3-6-3 of the Unified Code of Corrections (730 ILCS 5/3-6-3 (West 2018)) in a manner that deprived him of due process and equal protection under the fourteenth amendment of the United States Constitution.

¶ 13 The motion was accompanied by the proposed successive postconviction petition. The proposed petition raised two claims. First, it contended the circuit court violated defendant's eighth amendment and fourteenth amendment rights by accepting defendant's guilty plea to first degree murder, where the defendant was a juvenile at the time of the offense, and the truth-in-sentencing law applied, thus precluding him from presenting to the parole board solid evidence of his rehabilitation. According to the defendant, the United States Supreme Court has held the truth-in-sentencing act is unconstitutional as applied to juvenile defendants tried as adults, and the Court strongly condemns sentencing policies that prevent a juvenile from seeking to demonstrate his rehabilitation. The petition also asserted that the enactment of Public Act 101-440, which amended section 3-6-3 and made its rehabilitation provisions applicable solely to prisoners whose offenses were committed prior to June 19, 1998, violated his fourteenth amendment rights of due process and equal protection because it excluded similarly situated prisoners whose crimes were committed on or after June 19, 1998. Attached to the proposed successive petition were documents

showing that defendant had earned his general equivalency diploma and completed college-level coursework while incarcerated.

¶ 14 On November 14, 2019, the circuit court denied defendant's motion for leave to file a successive postconviction petition. It found defendant failed to show cause for not bringing his first claim in the initial postconviction petition, and he failed to show prejudice in his second claim. Defendant timely appealed.

¶ 15 ANALYSIS

¶ 16 This appeal is from an order denying defendant's motion for leave to file a successive petition under the Post-Conviction Hearing Act (Act) (725 ILCS 5/122-1 *et seq.* (West 2018)). Appellate review of such an order is *de novo*. *People v. Robinson*, 2020 IL 123849, ¶ 39. This court may affirm the order on any basis found in the record. *People v. Johnson*, 208 Ill. 2d 118, 129 (2003).

¶ 17 The Act provides a method by which any imprisoned person may assert that his conviction resulted from a substantial violation of his federal or state constitutional rights. 725 ILCS 5/122-1(a)(1) (West 2018); *People v. Smith*, 2015 IL 116572, ¶ 9. A proceeding under the Act is a collateral proceeding, not an appeal from the conviction. *People v. English*, 2013 IL 112890, ¶ 21.

¶ 18 Defendant's initial postconviction petition was filed in June 2005. After defendant withdrew his postconviction petition in January 2006, he did not refile or reinstate his petition within one year, or within the remaining limitation period, which effectively terminated the litigation. See *People v. Simms*, 2018 IL 122378, ¶¶ 46-47.

¶ 19 Because "the Act contemplates the filing of only one postconviction petition" (*People v. Anderson*, 375 Ill. App. 3d 990, 1000 (2007)), defendant subsequently chose the only postconviction option open to him—a motion for leave to file a successive postconviction petition

(see *Simms*, 2018 IL 122378, ¶ 49). Section 122-1(f) of the Act addresses the matter of successive petitions, and states:

> "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 Supp. 2019).

Defendant must satisfy both prongs of the cause-and-prejudice test to file a successive postconviction petition. *People v. Pitsonbarger*, 205 Ill. 2d 444, 464 (2002). However, he must set out only a *prima facie* case. *People v. Bailey*, 2017 IL 121450, ¶ 24. The cause-and-prejudice test must be applied to each individual claim raised by the defendant. *Pitsonbarger*, 205 Ill. 2d at 462. Leave to file a successive petition will be denied where "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." *People v. Smith*, 2014 IL 115946, ¶ 35.

¶ 20 The first of defendant's claims was that his eighth amendment and fourteenth amendment rights were violated where defendant was a juvenile at the time of his offense, but the truth-in-sentencing law precluded him from presenting evidence of his rehabilitation to the parole board. The circuit court found defendant failed to show cause for not bringing this claim in his initial postconviction proceeding. We agree.

¶ 21 Defendant knowingly and voluntarily pled guilty in 2004 to a murder he committed in 2002. With the truth-in-sentencing law in effect at the time of the offense (see Pub. Act 90-592 (eff. June 19, 1998)), the defendant knew—by pleading guilty—that he would need to serve 100% of his 22-year sentence. See 730 ILCS 5/3-6-3(a)(2)(i) (West 2002) ("a prisoner who is serving a term of imprisonment for first degree murder *** shall receive no good conduct credit and shall serve the entire sentence imposed by the court"). If he was aware of these facts when he pled guilty in 2004, he was aware of them when he filed his first postconviction petition in 2005. Defendant therefore failed to establish cause.

¶ 22 This court notes that the defendant emphasized that he was a juvenile at the time of his offense. Since his guilty plea, there have been significant developments regarding the sentencing of juveniles. See, *e.g.*, *Miller v. Alabama*, 567 U.S. 460 (2012) (the eighth amendment forbids a mandatory sentence of life in prison without possibility of parole for a juvenile who commits homicide); *Montgomery v. Louisiana*, 577 U.S. 190 (2016) (*Miller* applies retroactively on collateral review); *People v. Buffer*, 2019 IL 122327 (a sentence of more than 40 years constitutes *de facto* life for a juvenile offender). However, because defendant's 22-year sentence was not a *de facto* life sentence, such cases do not apply. See *Buffer*, 2019 IL 122327, ¶ 41. Moreover, defendant's "knowing and voluntary guilty plea waived any constitutional challenge based on subsequent changes in the applicable law." *People v. Jones*, 2021 IL 126432, ¶ 26.

¶ 23 Defendant's second claim was that his fourteenth amendment rights were violated when the legislature enacted Public Act 101-440 (Pub. Act 101-440, § 5 (eff. Jan. 1, 2020)), which amended section 3-6-3, and specifically restricted its rehabilitation provisions to prisoners whose offenses were committed prior to June 19, 1998, thereby excluding from its potential benefits

similarly situated prisoners whose crimes were committed on or after June 19, 1998. The circuit court found that defendant failed to show prejudice for this claim. We agree.

¶ 24 The equal protection clause under the fourteenth amendment requires the government to treat similarly situated persons in a similar manner. *Jenkins v. Wu*, 102 Ill. 2d 468, 477 (1984). The government, however, may treat different classes of persons differently as long as there is a rational basis for doing so. *Id.*

¶ 25 Public Act 101-440 (Pub. Act 101-440, § 5 (eff. Jan. 1, 2020)) amended section 3-6-3 of the Unified Code of Corrections (730 ILCS 5/3-6-3 (West 2020)) to entitle an inmate—who committed an offense "prior to June 19, 1998"—an additional 45 days or 90 days of sentence credit for participation in substance-abuse programs, educational programs, etc. 730 ILCS 5/3-6-3(a)(4)(B), (a)(4)(C) (West 2020). The additional sentence credit made possible by Public Act 101-440 is unavailable to an inmate who committed his offense on or after June 19, 1998. See *id.*

¶ 26 Defendant committed first degree murder in 2002. Unlike those who committed an offense prior to June 19, 1998, defendant was subjected to truth-in-sentencing provisions. Public Act 90-592, § 5 (eff. June 19, 1998); see *People v. Saterfield*, 2015 IL App (1st) 132355, ¶¶ 12-13. Under such provisions, defendant must serve 100% of the sentence imposed by the court and cannot receive sentencing credit. 730 ILCS 5/3-6-3(a)(2)(i) (West 2002). The truth-in-sentencing law does not offend equal protection or due process rights by requiring a defendant to serve 100% of his sentence for first degree murder. *People v. Gorgis*, 337 Ill. App. 3d 960, 975 (2003). Defendant's argument on appeal does not argue to the contrary and focuses only on Public Act 101-440. Accordingly, a defendant subject to the truth-in-sentencing law is not similarly situated as a defendant who is not. Public Act 101-440 therefore does not violate the equal protection clause.

¶ 27 CONCLUSION

¶ 28 The circuit court did not err in denying defendant's motion for leave to file a successive postconviction petition where he failed to show cause or prejudice for the two claims raised in the motion. Accordingly, we grant OSAD's *Finley* motion for leave to withdraw as counsel and affirm the circuit court's judgment.

¶ 29 Motion granted; judgment affirmed.