

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) 200423-U

NO. 4-20-0423

IN THE APPELLATE COURT

OF ILLINOIS

FOURTH DISTRICT

FILED

March 31, 2022
Carla Bender
4th District Appellate
Court, IL

THE PEOPLE OF THE STATE OF ILLINOIS,)	Appeal from the
Plaintiff-Appellee,)	Circuit Court of
v.)	Clark County
LUTHER J. SANDERS,)	No. 94CF5
Defendant-Appellant.)	
)	Honorable
)	Tracy W. Resch,
)	Judge Presiding.

PRESIDING JUSTICE KNECHT delivered the judgment of the court.
Justices Cavanagh and Steigmann concurred in the judgment.

ORDER

¶ 1 *Held:* The appellate court granted the Office of the State Appellate Defender's motion to withdraw as counsel and affirmed the trial court's judgment as no issue of arguable merit could be raised on appeal.

¶ 2 Defendant, Luther J. Sanders, appeals from the trial court's denial of his motion for leave to file a successive postconviction petition. On appeal, the Office of the State Appellate Defender (OSAD) moves to withdraw as counsel on the ground no issue of arguable merit can be raised. Defendant did not file a response to OSAD's motion. We grant OSAD's motion and affirm the trial court's judgment.

¶ 3 I. BACKGROUND

¶ 4 This court has set forth the underlying facts of this case in defendant's prior appeals. See *People v. Sanders*, 2020 IL App (4th) 180305-U; *People v. Sanders*, 328 Ill. App. 3d 1106, 817 N.E.2d 227 (2002) (table) (unpublished order under Supreme Court Rule 23);

People v. Sanders, 301 Ill. App. 3d 1111, 746 N.E.2d 349 (1998) (table) (unpublished order under Supreme Court Rule 23); *People v. Sanders*, 281 Ill. App. 3d 1149, 701 N.E.2d 844 (1996) (table) (unpublished order under Supreme Court Rule 23). Accordingly, we will set forth only those facts necessary to resolve the issues presented in this case.

¶ 5 In March 1994, defendant entered partially negotiated guilty pleas to charges of first degree murder (720 ILCS 5/9-1(a)(1) (West 1992)) and conspiracy to commit first degree murder (720 ILCS 5/8-2(a) (West 1992)). Other charges of murder were nol-prossed, and the prosecution agreed not to seek a capital or a natural life sentence. The trial court sentenced defendant to consecutive, extended terms of 100 years' imprisonment for murder and 14 years' imprisonment for conspiracy to commit murder. This court reduced defendant's 14-year extended term sentence to a 7-year term on appeal from the dismissal of his first postconviction petition. *Sanders*, 301 Ill. App. 3d 1111, 746 N.E.2d 349 (1998) (table) (unpublished order under Supreme Court Rule 23).

¶ 6 In March 2018, defendant filed a motion for leave to file a successive postconviction petition. In his motion, defendant argued, in part, his *de facto* life sentence violated the United States and Illinois constitutions. In support of this argument, defendant, who was 23 years old when he committed the crimes, cited (1) the Supreme Court's decisions in *Roper v. Simmons*, 543 U.S. 551 (2005), *Graham v. Florida*, 560 U.S. 48 (2010), and *Miller v. Alabama*, 567 U.S. 460 (2012), and their consideration of continuing brain development in adolescents; (2) the First District's decision in *People v. House*, 2015 IL App (1st) 110580, 72 N.E.3d 537, *vacated* No. 122134 (Ill. November 28, 2018) (supervisory order), applying such considerations to a defendant over the age of 18; and (3) experts regarding the developing brain and neuroscientific evidence. The trial court denied defendant's motion, finding defendant's

claim failed to allege a substantial denial of his constitutional rights in addition to being forfeited.

¶ 7 On appeal, defendant cited *People v. Coty*, 2018 IL App (1st) 162383, 110 N.E.3d 1105, in which the First District determined the intellectually disabled defendant's discretionary life sentence violated the proportionate penalties clause. However, after the parties had submitted their briefs on appeal, our supreme court reversed the First District, determining the principles in *Miller* and its progeny do not apply to intellectually disabled defendants. *People v. Coty*, 2020 IL 123972, ¶ 40, 178 N.E.3d 1071. We affirmed the trial court's denial of defendant's motion for leave to file a successive postconviction petition. *Sanders*, 2020 IL App (4th) 180305-U, ¶ 40.

¶ 8 In November 2018, while his prior appeal was pending before this court, defendant filed another motion for leave to file a successive postconviction petition. The claims raised in defendant's November 2018 motion were substantially identical to the claims raised in his March 2018 motion. However, defendant additionally cited *Coty*, 2018 IL App (1st) 162383, as cause for filing a successive postconviction petition.

¶ 9 The trial court stayed defendant's motion for leave to file a successive postconviction petition until proceedings in defendant's appeal from the denial of his March 2018 motion were resolved. On August 13, 2020, after this court filed its order in *Sanders*, 2020 IL App (4th) 180305-U, the trial court entered an order denying defendant leave to file a successive postconviction petition. The court determined defendant's claims were barred by *res judicata*.

¶ 10 Defendant appealed the trial court's denial of his motion for leave to file a successive postconviction petition, and OSAD was appointed to represent him on appeal. In

August 2021, OSAD moved to withdraw as counsel on appeal. We granted defendant leave to file a response to OSAD's motion on or before October 1, 2021. Defendant has not done so.

¶ 11

II. ANALYSIS

¶ 12 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. We agree.

¶ 13 The Post-Conviction Hearing Act (Act) (725 ILCS 5/122-1 to 122-7 (West 2018)) provides a means to collaterally attack a criminal conviction based on 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). A proceeding under the Act is a collateral proceeding and not an appeal from the defendant's conviction and sentence. *People v. Beaman*, 229 Ill. 2d 56, 71, 890 N.E.2d 500, 509 (2008). Issues adjudicated on direct appeal or a previous collateral proceeding are barred by *res judicata*, and issues that could have been raised but were not are forfeited. *People v. Tate*, 2012 IL 112214, ¶ 8, 980 N.E.2d 1100. The Act contemplates the filing of only one postconviction petition. *People v. Pitsonbarger*, 205 Ill. 2d 444, 459, 793 N.E.2d 609, 621 (2002). A defendant must obtain leave from the trial court in order to file a successive petition under the Act. 725 ILCS 5/122-1(f) (West 2018).

¶ 14 To obtain leave to file a successive postconviction petition, a defendant must do one of the following: (1) show cause and prejudice for the failure to raise a claim in his or her earlier petition or (2) set forth a colorable claim of actual innocence. *Pitsonbarger*, 205 Ill. 2d at 459. Cause is defined as "some objective factor external to the defense" that prevented the defendant from raising the claim in an earlier proceeding. (Internal quotation marks omitted.) *Id.* at 460. Prejudice is an error so infectious to the proceedings that the resulting conviction or sentence violates due process. *Id.* at 464. We review *de novo* the denial of a motion for leave to

file a successive postconviction petition. *People v. Crenshaw*, 2015 IL App (4th) 131035, ¶ 38, 38 N.E.3d 1256.

¶ 15 OSAD contends it can make no meritorious argument on appeal as defendant's claim is barred by the doctrine of *res judicata*. We agree.

¶ 16 In his November 2018 petition, defendant argues he can demonstrate cause and prejudice to file a successive postconviction petition where his *de facto* life sentence was imposed in violation of *Miller* and its progeny. Defendant raised this same argument in his March 2018 motion for leave to file a successive postconviction petition. We determined defendant failed to demonstrate cause and prejudice to file a successive postconviction petition. *Sanders*, 2020 IL App (4th) 180305-U, ¶ 38. The only change defendant made to his November 2018 motion, as compared to his March 2018 motion, was the inclusion of the First District's decision in *Coty* as demonstrating cause to file a successive petition. This court has already determined *Coty*, which was reversed by our supreme court, cannot demonstrate cause for defendant to file a successive postconviction petition. As we have already determined defendant cannot demonstrate cause for leave to file a successive postconviction petition, the trial court correctly concluded defendant's argument that he could demonstrate cause is barred by *res judicata*.

¶ 17 We agree with OSAD no meritorious argument can be made the trial court erred in dismissing defendant's November 2018 motion for leave to file a successive postconviction petition.

¶ 18 III. CONCLUSION

¶ 19 We grant OSAD's motion for leave to withdraw as counsel and affirm the trial court's judgment.

¶ 20

Affirmed.