

NOTICE

This order was filed under Supreme Court Rule 23 and may not be cited as precedent by any party except in the limited circumstances allowed under Rule 23(e)(1).

2020 IL App (4th) 170526-U

NO. 4-17-0526

IN THE APPELLATE COURT

OF ILLINOIS

FILED

May 18, 2020

Carla Bender

4th District Appellate
Court, IL

FOURTH DISTRICT

THE PEOPLE OF THE STATE OF ILLINOIS,)	Appeal from the
Plaintiff-Appellee,)	Circuit Court of
v.)	Champaign County
MICHAEL L. LIGHTFOOT,)	No. 04CF176
Defendant-Appellant.)	
)	Honorable
)	Thomas J. Difanis,
)	Judge Presiding.

JUSTICE KNECHT delivered the judgment of the court.
Presiding Justice Steigmann and Justice Turner concurred in the judgment.

ORDER

¶ 1 *Held:* We grant the Office of the State Appellate Defender’s motion to withdraw as appellate counsel and affirm the trial court’s judgment finding no meritorious claims can be raised on appeal.

¶ 2 This case comes to us on the motion of the Office of the State Appellate Defender (OSAD) to withdraw as appellate counsel on the grounds no meritorious issue can be raised on appeal. We grant OSAD’s motion and affirm the trial court’s judgment.

¶ 3 I. BACKGROUND

¶ 4 On January 29, 2004, defendant, Michael L. Lightfoot, was arrested and charged with unlawful possession of a controlled substance (1 gram or more but less than 15 grams of a substance containing cocaine) with intent to deliver (720 ILCS 570/401(c)(2) (West 2002)) within 1000 feet of a public park, a Class X felony (720 ILCS 570/407(b)(1) (West 2002)).

Defendant had two prior Class X convictions and was therefore subject to a mandatory natural life sentence, pursuant to section 33B-1(a)(e) of the Criminal Code of 1961 (720 ILCS 5/33B-1(a)(e) (West 2002)) and section 5/5-5-3(c)(7) of the Unified Code of Corrections (Unified Code) (730 ILCS 5/5-5-3(c)(7) (West 2002)).

¶ 5 Defendant's first jury trial resulted in a hung jury. On December 8, 2004, defendant was found guilty at his second jury trial and sentenced to natural life imprisonment.

¶ 6 On direct appeal, defendant argued (1) the enhancing statute for possession with intent to deliver within 1000 feet of a public park (720 ILCS 570/407(b)(1) (West 2002)) was unconstitutional as applied in his case, as he was within a dwelling at the time of the possession; (2) the trial court erred by allowing improper expert testimony about the difference between a drug user and a drug seller; (3) his sentence was too severe; and (4) the State failed to prove him guilty beyond a reasonable doubt. This court affirmed defendant's conviction and sentence. *People v. Lightfoot*, 368 Ill. App. 3d 1239 (2006) (table) (unpublished order under Supreme Court Rule 23).

¶ 7 On September 12, 2007, defendant filed a petition for postconviction relief under the Post-Conviction Hearing Act (Postconviction Act) (725 ILCS 5/122-1 to 122-7 (West 2006)). In his petition, defendant alleged (1) the trial court abused its discretion by issuing three jury instructions, (2) he received ineffective assistance of counsel where his trial counsel failed to object to improper expert testimony, and (3) he received ineffective assistance of counsel where his appellate counsel failed to raise all meritorious issues on his direct appeal. The trial court denied defendant's petition as frivolous and patently without merit. This court affirmed the trial court's judgment. *People v. Lightfoot*, 388 Ill. App. 3d 1152 (2009) (table) (unpublished order under Supreme Court Rule 23).

¶ 8 On May 30, 2017, defendant filed a “Petition for Post-Conviction Relief—pursuant to 725 ILCS 5/122-1 thru f) OR (Motion to Vacate Judgement [*sic*] and Void Sentence pursuant to 735 ILCS 5/2-1401(f).” In the petition, defendant challenged the charging instrument and various sentencing statutes. On June 2, 2017, the trial court entered an order dismissing defendant’s petition because defendant cited both the Postconviction Act and section 2-1401 of the Code of Civil Procedure (Civil Code) (735 ILCS 5/2-1401 (West 2016)). The trial court stated it would not consider the “hybrid pleading.”

¶ 9 On June 19, 2017, defendant filed a “Petition for Post-Conviction Relief,” asserting the same claims as in his hybrid pleading. On June 21, 2017, the trial court dismissed defendant’s petition pursuant to section 122-1(f) of the Postconviction Act (725 ILCS 5/122-1(f) (West 2016)).

¶ 10 On July 3, 2017, defendant filed a timely notice of appeal from the June 2, 2017, order and this court docketed the appeal as No. 4-17-0563. Also on July 3, 2017, defendant filed a timely notice of appeal from the June 21, 2017, order, and this court docketed the appeal as No. 4-17-0526. On July 11, 2017, the trial court appointed OSAD to represent defendant in his appeal from the order entered on June 2, 2017 (No. 4-17-0563). On August 2, 2017, this court consolidated defendant’s two appeals. On August 7, 2017, OSAD filed an amended notice with the clerk of the circuit court advising the clerk it had been appointed to represent defendant on appeal in case No. 4-17-0563 and case No. 4-17-0526, consolidated by this court on August 2, 2017.

¶ 11 In April 2019, OSAD filed a motion for leave to withdraw as counsel for defendant, asserting it had thoroughly reviewed the record and concluded no meritorious claim could be raised on appeal. We denied OSAD’s motion to withdraw without prejudice, where

OSAD failed to address the trial court’s June 2, 2017, ruling. See *People v. Lightfoot*, 2019 IL App (4th) 170526-U (unpublished order under Supreme Court Rule 23).

¶ 12 In October 2019, defendant moved to separate the consolidated cases, which this court allowed. We address only defendant’s appeal from the trial court’s order entered on June 21, 2017, dismissing defendant’s postconviction petition pursuant to section 122-1(f) of the Postconviction Act (725 ILCS 5/122-1(f) (West 2016)).

¶ 13 In November 2019, OSAD filed a new motion to withdraw its representation of defendant, stating it (1) read the record on appeal, (2) reviewed the facts and applicable law, and (3) discussed the case with another attorney, who also reviewed the record. OSAD concludes an appeal in this case would be without arguable merit. We granted defendant leave to file additional points and authorities, and he has responded. The State has also filed a brief and defendant has filed a reply brief.

¶ 14 II. ANALYSIS

¶ 15 Generally, a defendant may only file one petition under the Postconviction Act without leave of the trial court. 725 ILCS 5/122-1(f) (West 2014). 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 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. *Id.* 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.

¶ 16 A defendant is not required to file a formal motion seeking leave, but he must provide sufficient documentation for the court to determine whether leave is warranted. *People v. Tidwell*, 236 Ill. 2d 150, 161, 923 N.E.2d 728, 734-35 (2010). “[L]eave of court to file a successive postconviction petition should be denied when 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 or where the successive petition with supporting documentation is insufficient to justify further proceedings.” *People v. Smith*, 2014 IL 115946, ¶ 35, 21 N.E.3d 1172. 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.

¶ 17 Defendant claims his sentence is void and, therefore, it may be attacked “‘literally’ at any time,” citing *People v. Muntaner*, 339 Ill. App. 3d 887, 891, 791 N.E.2d 621, 624 (2003). However, our supreme court has since stated “only the most fundamental defects, *i.e.*, a lack of personal jurisdiction or lack of subject matter jurisdiction *** warrant declaring a judgment void.” *People v. Castleberry*, 2015 IL 116916, ¶ 15, 43 N.E.3d 932.

¶ 18 Defendant challenges his charging instruments and various sentencing statutes, claiming his sentence is void where Public Acts 89-428 and 91-434 were found unconstitutional and void under the single subject rule in *Johnson v. Edgar*, 176 Ill. 2d 499, 680 N.E.2d 1372 (1997).

¶ 19 Public Act 91-434 amended sections of the Criminal Code pertaining to first-degree murder, aggravated battery with a firearm, and aggravated discharge of a firearm, and

thus is wholly irrelevant to defendant's case. Pub. Act 91-434 (eff. Jan 1, 2000) (amending 720 ILCS 5/9-1, 12-4.2, 24-1.2).

¶ 20 The supreme court held Public Act 89-428 unconstitutional in its entirety. *Johnson*, 176 Ill. 2d at 517-18. Although Public Act 89-428 did amend section 5-5-3 of the Unified Code (Pub. Act 89-428 (eff. Dec. 13, 1995) (amending 730 ILCS 5/5-5-3)), the relevant provision, section 5-5-3(c)(7), remained unchanged. See 730 ILCS 5/5-5-3(c)(7) (West 1994); 730 ILCS 5/5-5-3(c)(7) (West 2002) (“When a defendant is adjudged a habitual criminal under Article 33B of the Criminal Code of 1961, the court shall sentence the defendant to a term of natural life imprisonment.”). Therefore, Public Act 89-428 is also wholly irrelevant to defendant's case.

¶ 21 Since the referenced laws are irrelevant to defendant's case, defendant has failed to assert any facts showing the trial court lacked personal or subject-matter jurisdiction. Therefore, defendant fails to demonstrate he has a “void” sentence that may be challenged at “any time.”

¶ 22 Defendant next asserts our review is “limited solely to whether defendant's petition is frivolous or is patently without merit.” Defendant asserts no basis for applying a first-stage analysis to the instant matter. See 725 ILCS 5/122-2.1(a)(2) (West 2018). Defendant filed a successive postconviction petition. A successive postconviction petition may only be filed if leave of the trial court is granted. *People v. LaPointe*, 227 Ill. 2d 39, 44, 879 N.E.2d 275, 278 (2007). The court denied defendant leave to file his successive postconviction petition.

¶ 23 Defendant makes no assertion as to forfeiture and fails to meet the cause-and-prejudice test. See 725 ILCS 5/122-1(f) (West 2018). We therefore do not reach the merits of defendant's successive petition as it was not considered filed. We agree with OSAD's

assessment no colorable argument can be made suggesting the trial court erred in denying defendant's successive postconviction petition.

¶ 24

III. CONCLUSION

¶ 25

We grant OSAD's motion to withdraw and affirm the trial court's judgment.

¶ 26

Affirmed.