

NOTICE
Decision filed 09/09/26. The text of this decision may be changed or corrected prior to the filing of a Petition for Rehearing or the disposition of the same.

2026 IL App (5th) 250394-U
NO. 5-25-0394
IN THE
APPELLATE COURT OF ILLINOIS
FIFTH DISTRICT

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).

THE PEOPLE OF THE STATE OF ILLINOIS,	)	Appeal from the
	)	Circuit Court of
Plaintiff-Appellee,	)	Macon County.
	)	
v.	)	No. 15-CF-1120
	)	
DARION L. EVANS,	)	Honorable
	)	Thomas E. Griffith Jr.,
Defendant-Appellant.	)	Judge, presiding.

JUSTICE BARBERIS delivered the judgment of the court.
Justices Boie and McHaney concurred in the judgment.

ORDER

¶ 1 *Held:* Where defendant failed to make a *prima facie* showing of cause that impeded defendant's ability to raise his present claims during earlier proceedings, the circuit court did not err in denying defendant leave to file a successive postconviction petition. Because no argument to the contrary would have arguable merit, this court grants appellate counsel leave to withdraw, and affirms the judgment of the circuit court.

¶ 2 Defendant, Darion L. Evans, appeals the judgment of the circuit court of Macon County that denied his *pro se* motion for leave to file a successive postconviction petition. Defendant's appointed counsel on appeal, the Office of the State Appellate Defender (OSAD), has concluded that this appeal lacks arguable merit, and on that basis, OSAD has filed a motion for leave to withdraw as counsel (see *Pennsylvania v. Finley*, 481 U.S. 551 (1987)), along with a supporting memorandum of law. OSAD served defendant with notice. This court provided defendant the

opportunity to file a written response to OSAD's motion. Defendant has not filed a response. This court has examined OSAD's *Finley* motion and memorandum of law, and the record on appeal. This court concludes that OSAD is correct that this appeal lacks arguable merit. Accordingly, we grant OSAD leave to withdraw as counsel, and we affirm the circuit court's judgment.

¶ 3

I. BACKGROUND

¶ 4 Most of the relevant facts underlying defendant's conviction and sentence are set forth in this court's disposition of defendant's appeal from the denial of his initial postconviction petition, following a third-stage evidentiary hearing. *People v. Evans*, 2023 IL App (5th) 220313-U (modified upon denial of rehearing). The remaining facts are taken from the record on appeal. On August 17, 2017, defendant agreed that he would enter into a plea of guilty to the offense of first degree felony murder. *Id.* ¶ 5. The factual basis for the plea was that defendant, who was 16 years old at the time of the offense, while committing or attempting to commit an armed robbery, used a dangerous weapon upon Cesley Taylor and thereby caused Taylor's death. *Id.* ¶ 4.

¶ 5 The terms of the fully negotiated plea agreement were that in exchange for defendant's plea, defendant would be sentenced to 45 years in the Illinois Department of Corrections (IDOC), followed by 3 years of mandatory supervised release (MSR). *Id.* ¶ 5. Six additional criminal counts pending against defendant in the case would be dismissed. *Id.* ¶¶ 4-5. During this initial guilty plea hearing, the circuit court noted that *People v. Reyes*, 2016 IL 119271, was pending before the Illinois Supreme Court, and the circuit court expressed concern as to whether the juvenile sentencing statute could be applied retroactively. *Id.* ¶ 5. Accordingly, the parties continued the proceedings to determine the appropriate juvenile sentencing rules. *Id.*

¶ 6 When the hearing was reconvened on October 12, 2017, the circuit court admonished defendant, pursuant to Illinois Supreme Court Rule 402 (eff. July 1, 2012), that the minimum

sentence defendant faced on the murder and attempted murder charges was 76 years. *Id.* ¶ 6. After the parties conferred off the record, the circuit court stated that it needed additional time to decide whether the juvenile sentencing statute would apply in this case. *Id.* A dispositional hearing was held on November 17, 2017, at which defendant waived his right to a jury trial and entered into the aforementioned guilty plea agreement. *Id.* ¶ 7. The circuit court accepted the guilty plea and dismissed the remaining charges. *Id.* The circuit court then entered a judgment of conviction and sentenced defendant to 45 years in IDOC, followed by 3 years of MSR. *Id.* Defendant did not move to withdraw his plea, and did not file a direct appeal. *Id.*

¶ 7 On June 9, 2020, defendant filed *pro se* a petition seeking relief pursuant to the Post-Conviction Hearing Act (Act) (725 ILCS 5/122-1 *et seq.* (West 2018)). *Id.* ¶ 8. Therein, defendant claimed that his 45-year sentence—imposed for an offense committed when defendant was 16 years old—violated the eighth amendment to the United States Constitution (U.S. Const., amend. VIII), as well as the corresponding provisions of the Illinois Constitution (Ill. Const. 1970, art. I, § 11). *Id.* He further claimed that he received a *de facto* life sentence without consideration of his youth and attendant circumstances. *Id.*

¶ 8 Counsel appointed to represent defendant thereafter filed an amended postconviction petition, wherein counsel argued that pursuant to the Illinois Supreme Court’s decision in *People v. Buffer*, 2019 IL 122327, defendant’s 45-year sentence constituted a *de facto* life sentence. *Id.* ¶ 9. The State contended in response that defendant’s guilty plea waived any issue of whether defendant’s sentence was constitutional, pursuant to *People v. Jones*, 2021 IL 126432, which at the time was pending before the Illinois Supreme Court. *Id.* Due to the uncertainty surrounding the law applicable to defendant’s circumstances, the circuit court continued the case, suggesting

that a third-stage evidentiary hearing should be held after the Illinois Supreme Court issued its ruling in *Jones*. *Id.* ¶ 10.

¶ 9 At the third-stage hearing, which was held on May 12, 2022, defendant testified. He was asked by his postconviction counsel if, at the time he entered his guilty plea agreement in exchange for a 45-year sentence, he was “aware that there would be a change in the law that made 40 years a *de facto* life sentence.” He testified, “I would say yes because—I would say yes because the *Miller* case had come [*sic*] out.” He was then asked, “But were you aware that the Supreme Court was going to put a hard and fast number on that life sentence?” He testified, “Potentially, but no.”

¶ 10 Thereafter, the circuit court concluded that defendant’s postconviction claim was waived pursuant to *Jones*, because defendant entered into a fully negotiated guilty plea. *Evans*, 2023 IL App (5th) 220313-U, ¶ 11. In rendering its decision, the circuit court stated, “ ‘if *Jones* was not the current status of the law, I don’t believe I could probably make a finding that the defendant was irreparably incorrigible with no hope of rehabilitation, and I probably would have reduced the sentence to 40 years or shortly under the 40 years guideline.’ ” *Id.* The circuit court added, “ ‘based on *Jones*, I don’t believe I have that option. That case is exactly on point. They found waiver applied. I have to find that waiver applied here ***.’ ” *Id.*

¶ 11 On appeal, defendant claimed that he did not receive reasonable assistance of postconviction counsel at the third-stage hearing, because counsel did not amend defendant’s petition to allege that defendant’s guilty plea counsel was ineffective when he advised defendant to plead guilty based on the misapprehension that a 76-year sentence was the mandatory minimum sentence, when it constituted a *de facto* life sentence that could not be imposed without considering several factors in mitigation. *Id.* ¶ 14. The State continued to argue that pursuant to *Jones*, defendant waived any claim regarding the constitutionality of his sentence, because defendant

entered a fully negotiated guilty plea agreement and failed to timely challenge that agreement. *Id.* This court agreed with the State, noting that in *Jones*, the Illinois Supreme Court reiterated that a voluntary guilty plea waives all nonjurisdictional errors and irregularities, including constitutional ones, and specifically held that this principle was true even in the context of an attempt to raise a claim that a sentence was a *de facto* life sentence and violated the eighth amendment. *Id.* ¶¶ 14-20. In light of *Jones*, we held that defendant’s claim was waived, because defendant voluntarily and knowingly entered into his negotiated guilty plea agreement, and did not file a motion to withdraw his guilty plea, or a direct appeal. *Id.* ¶¶ 20-22.

¶ 12 We stated that we recognized that defendant’s argument on appeal was specifically premised upon his contention that postconviction counsel provided unreasonable assistance for failing to amend the claim that his plea was involuntary as a result of plea counsel’s alleged ineffectiveness. *Id.* ¶ 23. However, we held that because defendant waived any challenge to his sentence, he did not receive unreasonable assistance of postconviction counsel due to counsel’s failure to amend the petition. *Id.* Accordingly, we affirmed the circuit court’s denial of defendant’s postconviction petition, because defendant’s claim was waived. *Id.*

¶ 13 On January 16, 2025, defendant filed *pro se* the motion for leave to file a successive postconviction petition (motion) that is the subject of this appeal. In the motion, defendant claimed that two new Illinois cases—*People v. Jean* (2024 IL App (1st) 220807) and *People v. Ratliff* (2024 IL 129356)—made *Jones* distinguishable from his case. As cause for failure to bring this claim in his initial postconviction petition, defendant stated that the cases were “new” and therefore were “newly discovered evidence to” defendant. He claimed that prejudice to him existed as well in that the alleged errors “so infected [his] judgment of sentence, violated due process in that the [circuit]

court erred and abused its discretion by giving [defendant] a discretionary *de facto* life sentence without following the proper procedural steps” for so doing.

¶ 14 In addition to the motion, defendant filed a proposed successive postconviction petition. Therein, defendant argued that his plea counsel was ineffective because, *inter alia*, plea counsel did not tell defendant that a 76-year prison sentence could not be imposed without the circuit court first considering the appropriate statutory factors. Defendant contended that the bad advice about sentencing that defendant received from plea counsel rendered defendant’s guilty plea involuntary. He again claimed that *Jean* and *Ratliff* made *Jones* distinguishable from his case. He further claimed the plea counsel was ineffective because “plea counsel failed to present mitigating factors at the 402 conference” held by the circuit court pursuant to Illinois Supreme Court Rule 402 (eff. July 1, 2012).

¶ 15 Defendant also claimed that he did not receive reasonable assistance of postconviction counsel because postconviction counsel failed to argue that plea counsel was ineffective and that defendant’s “plea was invalid.” He further claimed that his due process rights were violated because the circuit court (1) “wrongfully applied [a] firearm enhancement” and (2) incorrectly admonished defendant, during the Rule 402 conference, about the possible penalties defendant faced. Defendant also argued that his sentence violated the proportionate penalties provisions of the Illinois Constitution.

¶ 16 On April 3, 2025, the circuit court entered a written order in which it denied the motion. The circuit court concluded that *Jean* was not helpful to defendant and that defendant’s claims were barred by *res judicata* because they were raised and decided in defendant’s appeal from the denial of his initial postconviction petition. This timely appeal followed.

¶ 17

II. ANALYSIS

¶ 18 In the legal memorandum that accompanies its *Finley* motion to withdraw, OSAD notes the following potential issue: whether the circuit court erred by denying the motion. However, OSAD concludes the circuit court did not err, and that, accordingly, this potential issue lacks arguable merit. For the following reasons, we agree.

¶ 19 The Act provides a mechanism by which a criminal defendant may challenge the defendant's conviction by filing a petition for relief in the circuit court. 725 ILCS 5/122-1 (West 2022). The Act allows a defendant to assert that there was a substantial denial of the defendant's federal or state constitutional rights in the proceedings that resulted in the defendant's conviction or sentence. *People v. Hodges*, 234 Ill. 2d 1, 9 (2009). "A postconviction proceeding is a collateral proceeding, rather than an appeal of the underlying judgment, and therefore it allows inquiry only into constitutional issues that were not, and could not have been, adjudicated on direct appeal." *People v. Terry*, 2016 IL App (1st) 140555, ¶ 32. Consequently, issues that were adjudicated on direct appeal—or in a previous collateral proceeding—are barred by the doctrine of *res judicata*. *People v. Pitsonbarger*, 205 Ill. 2d 444, 458 (2002). Moreover, "any claim not presented in an initial postconviction petition or amended petition is waived." *Terry*, 2016 IL App (1st) 140555, ¶ 32. Broad, conclusory allegations are not permissible under the Act. *People v. Delton*, 227 Ill. 2d 247, 258 (2008). In addition, a petition filed under the Act must have attached affidavits, records, or other evidence supporting its allegations, or must state why they are not attached. 725 ILCS 5/122-2 (West 2022).

¶ 20 The Act contemplates the filing of only one postconviction petition. *Id.* § 122-1(f). "[S]uccessive postconviction petitions are highly disfavored." *People v. Bailey*, 2017 IL 121450, ¶ 39. If a defendant desires to file a successive postconviction petition after the defendant's initial

petition is dismissed or denied, the defendant must request leave of court before filing it. 725 ILCS 5/122-1(f) (West 2022). Unless a defendant asserts a claim of actual innocence, the circuit court will grant the defendant leave only if the defendant satisfies the cause-and-prejudice test. *Id.*; *People v. Montanez*, 2023 IL 128740, ¶ 77. To establish “cause” under the cause-and-prejudice test, a defendant must identify an objective factor, external to the defense, that impeded the defendant’s ability to raise a specific claim during the defendant’s initial postconviction proceeding. 725 ILCS 5/122-1(f) (West 2022); *Montanez*, 2023 IL 128740, ¶ 77. As the *Montanez* court recognized, it is axiomatic that cause cannot be established where a claim is precluded by *res judicata*, because cause for failure to bring the claim in the initial postconviction proceeding can never exist if the claim was in fact brought in that proceeding. 2023 IL 128740, ¶ 106. To establish “prejudice,” a defendant must demonstrate that the claimed constitutional error so infected the trial that the resulting conviction or sentence violates due process. 725 ILCS 5/122-1(f) (West 2022); *Montanez*, 2023 IL 128740, ¶ 77.

¶ 21 The cause-and-prejudice test is a more exacting standard than the gist-of-a-claim standard that circuit courts use to review initial postconviction petitions at the first stage of proceedings. *People v. Conick*, 232 Ill. 2d 132, 142 (2008). The defendant must make a *prima facie* showing of cause and prejudice in order to be granted leave, before any further proceedings on the defendant’s claims can occur. *Bailey*, 2017 IL 121450, ¶ 24. A defendant cannot obtain leave of court unless the defendant satisfies each of the two elements of cause and prejudice; it is not sufficient to establish only one element. *People v. Guerrero*, 2012 IL 112020, ¶ 15. Leave should be denied when it is clear, from a review of the successive petition and the documentation submitted by the defendant, that the claims alleged by the defendant fail as a matter of law, or where the successive petition, with its supporting documentation, is insufficient to justify further proceedings. *People v.*

Griffin, 2024 IL App (1st) 191101-C, ¶ 30. This court reviews *de novo* the circuit court’s decision—based upon the failure of a defendant to make a *prima facie* showing of cause and prejudice—to deny the defendant’s motion for leave to file a successive postconviction petition. *People v. Robinson*, 2020 IL 123849, ¶ 39. We may affirm on any basis supported by the record because the question before us is the correctness of the result reached by the circuit court, not the correctness of the circuit court’s reasoning in reaching that result. See, *e.g.*, *People v. Johnson*, 208 Ill. 2d 118, 128-29 (2003).

¶ 22 Here, as OSAD correctly notes, defendant’s claim, in the motion, that he received ineffective assistance of plea counsel based upon allegedly erroneous advice about the range of potential penalties defendant faced—and that therefore his guilty plea was involuntary—was in fact raised and rejected by this court in defendant’s appeal from the denial of his initial postconviction petition, as part of his claim of unreasonable assistance of postconviction counsel. Accordingly, this claim is barred by *res judicata*, and therefore fails to establish the requisite *prima facie* showing of cause. See *Montanez*, 2023 IL 128740, ¶ 106.

¶ 23 As OSAD further correctly notes, defendant waived the following claims pursuant to *People v. Jones*, 2021 IL 126432, ¶¶ 20-21, in which, as discussed above, the Illinois Supreme Court reiterated that a voluntary guilty plea waives all nonjurisdictional errors and irregularities, including constitutional ones: (1) plea counsel was ineffective because “plea counsel failed to present mitigating factors at the [Rule] 402 conference”; (2) defendant’s due process rights were violated because the circuit court “wrongfully applied [a] firearm enhancement,” and incorrectly admonished defendant, during the Rule 402 conference, about the possible penalties defendant faced; and (3) defendant’s sentence violated the proportionate penalties provisions of the Illinois Constitution.

¶ 24 As OSAD points out, defendant attempts to demonstrate cause in this case by claiming that two new Illinois cases—*People v. Jean* (2024 IL App (1st) 220807) and *People v. Ratliff* (2024 IL 129356)—make *Jones* distinguishable from his case. However, as OSAD further points out, neither case is applicable, or helpful, to defendant’s claims. In *Jean*, an appellate decision from our colleagues in the First District following the circuit court’s dismissal of the defendant’s initial postconviction petition at the second stage of proceedings, the court agreed with the defendant that postconviction counsel did not comply with Illinois Supreme Court Rule 651(c) (eff. July 1, 2017), and that remand was therefore necessary, regardless of the potential merit of the defendant’s postconviction claim. 2024 IL App (1st) 220807, ¶¶ 1, 26, 30-39. The *Jean* court held that the State’s waiver argument was an improper attempt to reach the merits of the defendant’s claim, notwithstanding postconviction counsel’s failure to comply with Rule 651(c), and the general rule that remand was therefore required. *Id.* ¶ 39.

¶ 25 The *Jean* court did not in any way call into question the validity of the waiver rule put forth in *Jones*; indeed, the *Jean* court “acknowledge[d] the well-settled principles set forth in *Jones*,” then distinguished *Jones* on the basis that in *Jones*, there was no allegation of unreasonable assistance of postconviction counsel, and therefore the general rules related to Rule 651(c) were not at issue in *Jones*. *Id.* ¶ 44. The *Jean* court noted “that the State may waive waiver at the second stage of proceedings if [a postconviction] petition establishes a deprivation of a constitutional magnitude,” and that “nothing in *Jones* precludes a defendant from advancing a waived constitutional claim.” *Id.* The *Jean* court also distinguished *Jones* on the basis that the substantive issue before the *Jean* court was not the same as the issue before the *Jones* court. *Id.* ¶ 45. Its discussion of those differences notwithstanding, the *Jean* court ultimately based its reversal of the circuit court solely “on the basis of unreasonable assistance of postconviction counsel.” *Id.* ¶ 50.

¶ 26 We first note that *Jean*, as a case from the appellate court, cannot and does not overrule or displace *Jones*. See, e.g., *People v. Hatcher*, 2024 IL App (1st) 220455, ¶ 58 (Illinois Appellate Court lacks the authority to overrule the decisions of the Illinois Supreme Court). We further note that we agree with OSAD that *Jean* stands only for the proposition that the State’s potential ability to argue that a claim is waived under *Jones* does not excuse postconviction counsel’s failure to add that claim to an amended petition, because it is possible that the State will waive waiver and allow the claim to proceed. That issue, however, is not present in this case, which involves defendant’s attempt to use *Jean* to make the *prima facie* showing of cause necessary to file a successive postconviction petition.

¶ 27 As OSAD correctly notes, because the present case involves a proposed successive postconviction petition, not an initial postconviction petition, defendant is precluded from raising herein a claim of unreasonable assistance of postconviction counsel with regard to his initial petition. See *People v. Flores*, 153 Ill. 2d 264, 276-77 (1992) (because postconviction claims are limited to constitutional issues occurring at trial or sentencing, and because there is no constitutional right to counsel during postconviction proceedings, a successive postconviction petition may not raise claims of unreasonable assistance of postconviction counsel during proceedings on a prior petition). Accordingly, OSAD is correct that *Jean*—which we reiterate involved an initial postconviction petition, not a proposed successive postconviction petition—is not helpful to defendant in the present case, as he is precluded from pursuing the unreasonable assistance of postconviction counsel claim he attempts to raise with regard to his initial postconviction petition. See *id.*

¶ 28 The other new case put forward by defendant is *People v. Ratliff*, 2024 IL 129356. In *Ratliff*, the issue before the Illinois Supreme Court was whether the circuit court gave adequate

admonishments to the defendant before allowing him to proceed *pro se*. *Id.* ¶¶ 9-11. After addressing jurisdictional issues, the *Ratliff* court concluded that the defendant waived that issue when he entered a knowing and voluntary guilty plea, because “[a]ny constitutional claims that arose before his plea, including any claim related to his right to counsel, were waived” by the plea. *Id.* ¶¶ 15-24. Thus, OSAD is correct that *Ratliff* reinforces, rather than distinguishes, *Jones*. In fact, *Ratliff* expressly cited *Jones* in support of the *Ratliff* holding. *Id.* ¶ 24.

¶ 29

III. CONCLUSION

¶ 30 For the foregoing reasons, defendant failed to make a *prima facie* showing of cause for purposes of satisfying the cause-and-prejudice test required for the filing of a successive postconviction petition. See 725 ILCS 5/122-1(f) (West 2022); *Montanez*, 2023 IL 128740, ¶ 77; *Bailey*, 2017 IL 121450, ¶ 24. Because defendant was required to make a *prima facie* showing of both cause and prejudice, defendant’s claims fail. *Guerrero*, 2012 IL 112020, ¶ 15. Accordingly, the circuit court did not err in denying defendant’s *pro se* motion for leave to file a successive postconviction petition. No argument to the contrary would have arguable merit. Therefore, we grant OSAD leave to withdraw as counsel, and we affirm the circuit court’s judgment.

¶ 31 Motion granted; judgment affirmed.