

NOTICE

Decision filed 10/05/26. 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) 250247-U

NO. 5-25-0247

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,	)	Vermilion County.
	)	
v.	)	No. 00-CF-251
	)	
JERMAINE BLAKE,	)	Honorable
	)	Karen E. Wall,
Defendant-Appellant.	)	Judge, presiding.

JUSTICE BOLLINGER delivered the judgment of the court.
Justices Boie and Sholar concurred in the judgment.

ORDER

¶ 1 *Held:* This court grants defendant's appointed appellate counsel leave to withdraw and affirms the trial court's judgment that denied defendant leave to file a successive postconviction petition. Defendant did not satisfy the cause-and-prejudice test for obtaining leave to file a successive petition.

¶ 2 Defendant, Jermaine Blake, filed a *pro se* motion for leave to file a successive postconviction petition, and the trial court denied the motion due to defendant's failure to satisfy the cause-and-prejudice test. Defendant appeals. Defendant's appointed attorney on appeal, the Office of the State Appellate Defender (OSAD), has concluded that this appeal lacks merit. On that basis, OSAD has filed with this court a motion for leave to withdraw as counsel, along with a supporting memorandum of law. See *Pennsylvania v. Finley*, 481 U.S. 551 (1987). The defendant has filed a written response. This court has examined OSAD's *Finley* motion and memorandum,

defendant's response, the record on appeal, and the prior appellate decisions stemming from defendant's case. This court concludes that this appeal lacks merit. Accordingly, this court grants OSAD leave to withdraw as counsel and affirms the trial court's judgment denying defendant leave to file a successive postconviction petition.

¶ 3

I. BACKGROUND

¶ 4

A. Trial, Sentencing, and Direct Appeal

¶ 5 At the end of a trial in September 2001, a jury found defendant guilty of first degree murder for shooting and killing Otis Nelson, and it found him guilty of aggravated battery with a firearm for shooting Deja Tims, who was Nelson's stepson. The jury also found defendant guilty of armed robbery in connection with Deja Tims, attempted armed robbery in connection with Antoinetta Tharp, and two counts of home invasion for entering the homes of Deja Tims and Antoinetta Tharp, without authority and while armed with a firearm. Subsequent to the jury's verdicts, the trial court sentenced defendant to natural life imprisonment for first degree murder, and consecutive terms of imprisonment for each of the other five felony counts.

¶ 6 Almost none of the trial transcript is included in the record on appeal. This quick summary of the trial evidence is derived from the detailed summary found in the dispositional order entered by the Appellate Court, Fourth District, in defendant's direct appeal. In its dispositional order, the Fourth District summarized the trial testimonies of 15 witnesses. The defendant did not testify.

¶ 7 Evidence at trial showed that on the night of May 8, 2000, defendant and an accomplice, Tyree Jackson, openly carried handguns as they robbed or attempted to rob victims in their homes in Danville. First, defendant and Jackson rushed into a house belonging to Antoinetta Tharp. The two attempted to rob Tharp, pulling her hair and hitting her in the head with a gun, but they left Tharp's house without any loot. Afterward, defendant and Jackson went to another house. Just

outside that house, they encountered a man named Deja Tims. They held guns, and robbed Tims of his cash. Jackson went inside the house, where he encountered Otis Nelson. Jackson shot Nelson as they struggled for Jackson's gun. Defendant, too, then entered the house and fired his own gun. Finally, defendant shot Tims in the arm. Nelson died from his gunshot wounds.

¶ 8 Tyree Jackson was one of the State's witnesses at defendant's trial. Jackson testified that he had pleaded guilty to the first degree murder of Otis Nelson and was serving a 25-year prison sentence for that crime. As part of his plea agreement, Jackson agreed to testify against defendant at his trial. During his trial testimony, Jackson described in detail how he and defendant worked together to commit the various crimes for which defendant was on trial.

¶ 9 Deja Tims testified at the trial that on the night of May 8, 2000, he had stepped outside of his house to smoke a cigarette. Two black men, both of whom carried guns, walked up to him. The shorter of the two men took two or three hundred dollars from Tims's pocket. The taller of the two men went inside Tims's house. Tims heard a scuffle inside the house. The shorter man, who remained outside the house with Tims, looked through the window and fired a shot into the house. Tims then heard two shots being fired inside the house. The shorter man then fired two shots at Tims, with one hitting him in his right arm. The two black men ran away from the house. Tims identified defendant as one of the two armed black men who had approached him.

¶ 10 On direct appeal, defendant presented seven arguments. One argument was that the State had failed to prove him guilty beyond a reasonable doubt, for the trial evidence allegedly consisted of conflicting and self-serving stories from codefendants and confusing and contradictory eyewitness accounts. The other six arguments involved instances of alleged trial error, ineffective assistance of trial counsel, and deprivation of a fair trial due to cumulative errors.

¶ 11 The Appellate Court, Fourth District, affirmed the judgment of conviction. *People v. Blake*, No. 4-02-0146 (Mar. 23, 2005) (unpublished order under Illinois Supreme Court Rule 23). The court either disagreed with defendant’s arguments, including the reasonable-doubt argument, or concluded that the doctrines of forfeiture or harmless error applied.

¶ 12 B. Initial Postconviction Proceedings, Dismissal of the Initial Petition, and Appeal

¶ 13 In April 2006, defendant filed a *pro se* petition for postconviction relief. The record on appeal does not include the *pro se* postconviction petition.

¶ 14 In January 2007, the trial court, in a docket-entry order, noted that it had not entered an order on defendant’s *pro se* postconviction petition. The court docketed the petition for further consideration and appointed postconviction counsel for defendant.

¶ 15 On December 10, 2007, which was during his representation by postconviction counsel, defendant filed a *pro se* “motion to supplement the original post-conviction petition.” In the motion to supplement, defendant claimed that newly-discovered evidence, in the form of an affidavit from State’s trial witness Tyree Jackson, supported a claim that defendant was actually innocent of the crimes of which he stood convicted, and that the Jackson affidavit also supported a claim of “perjured testimony” and “knowing use of perjured testimony.”

¶ 16 The one-page affidavit of Tyree Jackson, dated October 30, 2007, was attached to the *pro se* motion to supplement the original postconviction petition. In the affidavit, Jackson stated that he agreed to testify against defendant as part of his plea agreement with the State, pursuant to which he had pleaded guilty to murder. According to Jackson, although he had incriminated defendant at trial, defendant was not even present at the commission of the charged crimes. Jackson only said that defendant was present so as to “save [himself] from the death penalty.” In truth, Jackson committed the crimes with a man named Bennie McClain, who was Jackson’s real partner

in crime. According to Jackson's affidavit, Jackson shot and killed Otis Nelson, and McClain shot Deja Tims. Nowhere in his affidavit did Jackson aver that the State, in order to obtain defendant's criminal convictions, knowingly used Jackson's perjured testimony, or that the State had reason to know that Jackson's trial testimony regarding defendant was false.

¶ 17 On March 11, 2008, postconviction counsel filed, on defendant's behalf, an amended petition for postconviction relief. Postconviction counsel did not file, at any point during these initial postconviction proceedings, a certificate of compliance with Illinois Supreme Court Rule 651(c) (Dec. 1, 1984). In the amended postconviction petition, defendant asserted a freestanding claim of actual innocence, and no other claims, and he alleged that the actual-innocence claim was supported by newly-discovered evidence in the form of affidavits from Tyree Jackson and Iriale Joplin.

¶ 18 Those two affidavits were attached to the amended postconviction petition. The affidavit of Tyree Jackson was the same one-page affidavit that was attached to defendant's *pro se* motion to supplement the original postconviction petition, filed on December 10, 2007.

¶ 19 In her own half-page affidavit, Iriale Joplin averred that she was traveling in a car with Tyree Jackson on the night of the crimes, and she did not see defendant at any time that night. Joplin also averred that a Danville police detective and the State's attorney interviewed Joplin soon after the crimes, and she told them that she "never once saw [defendant] that night."

¶ 20 On April 24, 2008, the State filed a motion to dismiss the amended postconviction petition. On April 29, 2008, the circuit court held a hearing on the State's motion to dismiss the amended postconviction petition. The docket entry for that date shows that the attorneys' arguments were heard and the court then granted the State's motion to dismiss.

¶ 21 The record on appeal does not include a transcript of the April 29, 2008, hearing on the State’s motion to dismiss the amended postconviction petition. However, defendant appealed from the trial court’s dismissal of his amended petition, and in its dispositional order in that appeal, the Fourth District gave the following account of the April 29, 2008, hearing:

“After hearing arguments on the motion, the trial court stated Jackson’s affidavit set forth an allegation of perjury and not one of actual innocence. The court found defendant had not alleged the State knew or should have known about perjured testimony and the absence of such an allegation was fatal to his postconviction claim. As to Joplin’s affidavit, the court stated her claim was not an assertion of actual innocence as she merely claimed she did not see defendant. The court granted the motion to dismiss.” *People v. Blake*, No. 4-08-0328, order at 11 (Aug. 20, 2009) (unpublished order under Illinois Supreme Court Rule 23).

Defendant appealed from the dismissal order.

¶ 22 On postconviction appeal, defendant, through his appointed appellate counsel, OSAD, did not raise an issue concerning postconviction counsel’s failure to file a certificate of compliance with Rule 651(c). Defendant’s sole argument was that the trial court had erred in dismissing his amended postconviction petition without an evidentiary hearing. In presenting this argument, defendant stated that he had made an arguable claim of actual innocence based on Tyree Jackson’s affidavit. Iriale Joplin’s affidavit went unmentioned in his argument.

¶ 23 The Fourth District affirmed the trial court’s judgment. *Blake*, No. 4-08-0328. The court stated: “Because defendant did not show the State knew or should have known of the perjured testimony [of Tyree Jackson], defendant failed to state a constitutional claim.” *Blake*, No. 4-08-0328, order at 15.

¶ 24 C. Motion for Leave to File a Successive Postconviction Petition:
The Subject of the Instant Appeal

¶ 25 On December 24, 2024, defendant filed a *pro se* motion for leave to file a successive petition for postconviction relief. The *pro se* motion for leave is the subject of the instant appeal. The motion for leave was not accompanied by a proposed successive petition. It also was unaccompanied by any supporting documentation, except for defendant's own affidavit, wherein he swore that the contents of the motion for leave were true to the best of his knowledge and belief.

¶ 26 In his *pro se* motion for leave, defendant did not seek to raise a claim that he was actually innocent of the crimes. At the same time, he made no attempt to satisfy the cause-and-prejudice test for obtaining leave to file a successive petition. Instead, defendant, very early in his motion for leave, wrote that under the Post-Conviction Hearing Act, defendant could file only one postconviction petition without leave of court. He then continued: "Leave of the court may be granted when a petition demonstrates cause for his or her failure to bring the claim in his or her initial postconviction proceedings and prejudice results from that failure. However, where fundamental fairness so requires[,] strict application of procedural bars may be relaxed." It was the motion for leave's only reference or allusion to the cause-and-prejudice test.

¶ 27 The *pro se* motion sought leave to file a petition that presented the following five claims:

(1) Postconviction trial counsel failed to provide defendant with a reasonable level of assistance in the initial postconviction proceedings, as evidenced by counsel's failure to file in the trial court a certificate of compliance with Supreme Court Rule 651(c). The record of this case did not otherwise "reflect compliance" with the rule.

(2) Postconviction appellate counsel failed to provide defendant with reasonable assistance when he failed to argue before the appellate court that postconviction trial counsel had failed to file a Rule 651(c) certificate.

(3) Postconviction trial counsel failed to provide reasonable assistance when he chose to exclude from the amended postconviction petition a due-process claim that the State had knowingly used the perjured testimony of State’s trial witness Deja Tims to obtain defendant’s conviction. Defendant had included that claim in his original *pro se* postconviction petition. (As noted previously, defendant’s original *pro se* petition is not included in this record on appeal. Furthermore, there is no affidavit from Deja Tims, or any other type of documentation, that might support the allegation that Tims perjured himself.)

(4) Postconviction trial counsel failed to provide reasonable assistance when he filed an amended postconviction petition in which he “switch[ed]” from a due-process claim regarding the State’s knowing use of Tyree Jackson’s perjured trial testimony to a freestanding claim of defendant’s actual innocence. In his original *pro se* postconviction petition, defendant had presented the due-process claim, and he had supported the claim with Tyree Jackson’s affidavit.

(5) Postconviction trial counsel failed to provide reasonable assistance when he filed an amended postconviction petition that presented a freestanding claim of actual innocence, where an actual-innocence claim “was not the accurate claim.” Defendant’s original *pro se* postconviction petition was accompanied by the affidavit of Iriale Joplin, who was “involved” in the crimes and made statements to the police. Joplin “was one of the State witnesses that the State decided not to call to the stand.”

¶ 28 On February 6, 2025, the circuit court entered an order that denied defendant leave to file a successive postconviction petition. The trial court found that defendant had established neither cause nor prejudice that would justify the filing of a successive postconviction petition.

¶ 29 Defendant filed a notice of appeal. This court appointed OSAD as defendant’s counsel on postconviction appeal.

¶ 30 II. ANALYSIS

¶ 31 This appeal is from the trial court’s order that denied defendant leave to file a successive postconviction petition. As previously mentioned, OSAD filed a *Finley* motion. In his written response to that motion, defendant argues only that his postconviction counsel from his initial postconviction proceedings did not file a Rule 651(c) certificate or otherwise comply with the rule. See Ill. S. Ct. R. 651(c) (eff. Dec. 1, 1984).

¶ 32 The question of whether to allow or deny leave to file a successive postconviction petition is resolved on the pleadings, and therefore this court reviews the denial of leave *de novo*. *People v. Wrice*, 2012 IL 111860, ¶ 50. This court may affirm the trial court’s judgment on any basis supported by the record, regardless of the trial court’s reasoning. *People v. Dorsey*, 2021 IL 123010, ¶ 33.

¶ 33 The Post-Conviction Hearing Act (Act) (725 ILCS 5/122-1 *et seq.* (West 2022)) provides a statutory mechanism for a criminal defendant to assert that “in the proceedings which resulted in his or her conviction there was a substantial denial of his or her rights under the Constitution of the United States or of the State of Illinois or both.” *Id.* § 122-1(a)(1); see *People v. Clark*, 2023 IL 127273, ¶ 38.

¶ 34 This legislatively-defined proceeding is not an appeal from the underlying judgment but rather a collateral attack on the judgment. *People v. House*, 2021 IL 125124, ¶ 15. Its purpose “is to allow inquiry into constitutional issues relating to the conviction or sentence that were not, and could not have been, determined on direct appeal.” *People v. Barrow*, 195 Ill. 2d 506, 519 (2001).

¶ 35 Postconviction proceedings begin with the filing of a petition for postconviction relief. 725 ILCS 5/122-1(b) (West 2022). The petition must “clearly set forth” a defendant’s allegations of constitutional violations. *Id.* § 122-2. It also must “have attached thereto affidavits, records, or other evidence supporting its allegations or shall state why the same are not attached.” *Id.*

¶ 36 The Act permits the filing of only one petition without first obtaining leave of the circuit court (*id.* § 122-1(f)), and it provides that any claim not raised in the original or amended petition is waived (*id.* § 122-3). Although only one postconviction proceeding is contemplated, the bar against successive proceedings will be relaxed on either of two bases. *People v. Edwards*, 2012 IL 111711, ¶ 22. First, a defendant may raise a defaulted constitutional claim by satisfying the cause-and-prejudice test. 725 ILCS 122-1(f) (West 2022) (codification of cause-and-prejudice test); *Edwards*, 2012 IL 111711, ¶ 22. Second, a defendant may assert a fundamental miscarriage of justice based on a claim of actual innocence. *Edwards*, 2012 IL 111711, ¶ 23. Regardless of which of the two bases a defendant relies upon, he has the burden to obtain leave of court before further proceedings can be held on his claim. *Id.* ¶ 24 (citing *People v. Tidwell*, 236 Ill. 2d 150, 157 (2010)). A defendant “also ‘must submit enough in the way of documentation to allow a circuit court to make that determination.’ ” *Id.* (quoting *Tidwell*, 236 Ill. 2d at 161). “[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.

¶ 37 Where a defendant does not assert a claim of actual innocence, he obtains leave of court by making a *prima facie* showing of both (1) “cause” for his failure to raise the claim in his initial

petition and (2) “prejudice” resulting from that failure. *Clark*, 2023 IL 127273, ¶ 47; *People v. Lusby*, 2020 IL 124046, ¶ 27. Cause-and-prejudice determinations are to be made on the pleadings and not by evidentiary hearings. *Smith*, 2014 IL 115946, ¶ 33. 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.” 725 ILCS 5/122-1(f) (West 2022). The “objective factor” must be one “external to the defense.” *Clark*, 2023 IL 127273, ¶ 60. To demonstrate “prejudice,” a defendant must show 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 2022).

¶ 38 As previously mentioned, defendant, in his *pro se* motion for leave to file a successive postconviction petition, did not even attempt to satisfy the cause-and-prejudice test for obtaining leave to file such a petition. Although he mentioned the cause-and-prejudice test, he did not explain how cause and prejudice could be established in his case. In light of the complete absence of a *prima facie* showing of either cause or prejudice, the trial court properly denied defendant leave to file a successive petition. This court hereby affirms the judgment denying leave.

¶ 39 III. CONCLUSION

¶ 40 Defendant failed to satisfy the cause-and-prejudice test, and therefore the trial court did not err in denying him leave to file a successive postconviction petition. No argument to the contrary would have merit. Accordingly, this court grants OSAD leave to withdraw as counsel and affirms the trial court’s judgment.

¶ 41 Motion granted; judgment affirmed.