

NOTICE
Decision filed 05/26/26. 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) 250799-U

NO. 5-25-0799

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,)	Williamson County.
)	
v.)	No. 00-CF-200
)	
DAVID HERNANDEZ,)	Honorable
)	Michelle M. Schafer,
Defendant-Appellant.)	Judge, presiding.

JUSTICE HACKETT delivered the judgment of the court.
Justices Vaughan and Bollinger concurred in the judgment.

ORDER

¶ 1 *Held:* Where the defendant did not establish cause for failing to raise his claims during his initial postconviction proceeding, the circuit court did not err in denying him leave to file a successive postconviction petition, and therefore the defendant’s appellate counsel is granted leave to withdraw and the circuit court’s judgment denying him leave to file is affirmed.

¶ 2 In 2003, the defendant, David Hernandez, pleaded guilty to felony murder, pursuant to a fully negotiated plea agreement with the State. Since his guilty plea, he has been serving a 75-year prison sentence. The defendant now appeals from the circuit court’s order that denied his motion for leave to file a successive petition for postconviction relief. His appointed counsel on appeal, the Office of the State Appellate Defender (OSAD), has concluded that this appeal lacks arguable merit. On that basis, OSAD has filed a motion to withdraw as counsel (*Pennsylvania v. Finley*, 481 U.S. 551 (1987)), along with a supporting memorandum of law. The defendant has filed a

response to OSAD's *Finley* motion, wherein he states, briefly but emphatically, that he has no objection to the motion. This court shares OSAD's assessment of this appeal and affirms the circuit court's judgment.

¶ 3

I. BACKGROUND

¶ 4 In 2000, 78-year-old Maxine McKenzie was shot in the head and killed. In connection with her death, the State filed informations charging the defendant and two codefendants, Christopher L. Alexander and Lucas Duvall, individually, with various counts of first degree felony murder (720 ILCS 5/9-1(a)(3) (West 1998)). Count XI, in particular, alleged that the defendant had shot McKenzie in the head, thereby causing her death, during the course of a residential burglary. At the time of the shooting, the defendant was 18 years old.

¶ 5 The circuit court appointed separate counsel for the defendant, Alexander, and Duvall. The State announced its intention to seek the death penalty for all three codefendants. The three codefendants' cases were severed for trial. All three cases proceeded independently through the circuit court.

¶ 6

A. Motion to Suppress Statements

¶ 7 In May 2002, counsel filed, on behalf of the defendant, a motion to suppress the defendant's statements to police. He alleged that his statements were involuntary because he was unable to understand the rights that he waived due to his being sleep-deprived, under the influence of intoxicants, and being emotionally upset. In addition, the defendant's statements were involuntary due to the police questioning him continuously for hours and leading him to believe that if he told the story that the police asked him to tell, he would be allowed to go home.

¶ 8 In April 2003, the circuit court held a suppression hearing. For the State, three police officers testified, including the two who had interrogated the defendant. Their collective testimony

was that the defendant freely agreed to speak with the police, that he seemed alert and coherent, that he was not threatened in any manner, that he was not promised anything, and that he never asked for an attorney or for termination of the interview. The recorded statement of the defendant was admitted into evidence without objection by the defendant. The judge said that he would listen to the recorded statement in chambers after the hearing.

¶ 9 The defendant did not present live witnesses. He submitted a report by Dr. Ruth Kuncel, which was admitted into evidence without objection by the State. The report was in two parts and consisted of an “evaluation report” dated April 11, 2003, and an “amendment to evaluation report” dated April 14, 2003. In her report, Ruth Kuncel, Ph.D., a clinical psychologist, wrote that she had “interviewed and tested” the defendant for approximately 18 hours in December 2002. Dr. Kuncel reviewed the defendant’s history of childhood abuse and his history of substance abuse. Dr. Kuncel concluded, to a reasonable degree of psychological certainty, that the defendant did not knowingly, intelligently, and voluntarily give statements to the police. This conclusion was largely tied to the defendant’s history of childhood abuse and the enduring effects of that history on the defendant’s thought processes.

¶ 10 On May 22, 2003, the court found, *inter alia*, that the defendant had knowingly and voluntarily agreed to speak with the police, that he had responded appropriately and without confusion to police questioning, and that there was no police coercion, intimidation, or mental abuse associated with the interrogation. The court denied the defendant’s motion to suppress statements.

¶ 11 **B. Guilty Plea**

¶ 12 On November 7, 2003, the defendant, his appointed counsel, and the State appeared in open court. Counsel stated that the defendant, pursuant to negotiations with the State, would plead guilty

to felony murder as charged in count XI and would be sentenced to imprisonment for an extended term of 75 years, while the other counts against the defendant would be dismissed. The State concurred in counsel's statement of the agreement's terms and explained that the extended sentence was due to the victim's advanced age.

¶ 13 The court then thoroughly admonished and questioned the defendant about the nature of the charge against him, the sentencing he faced, his right to plead guilty or not guilty, the consequences of a guilty plea, his understanding of the plea agreement, and the voluntariness of the guilty plea, all in strict compliance with Illinois Supreme Court Rule 402(a) and (b) (eff. July 1, 1997). The defendant indicated his understanding of all those subjects and also indicated the voluntariness of his plea. When the court asked the defendant how he pleaded to first degree murder, he answered, "Guilty." In answer to more specific queries from the court, the defendant indicated that he participated in a forcible felony at McKenzie's residence; that in the course of committing residential burglary, he shot McKenzie in the head with a firearm; and that McKenzie died as a result of his conduct and the conduct of others. A signed "Plea of Guilty and Waiver of Jury Trial" to count XI, charging first degree murder, was presented to the court. The defendant acknowledged signing that paper, and he stated that he understood it and had no questions about its meaning. The State presented a factual basis for the plea, and counsel concurred. The court found that there was a sufficient factual basis for the plea. See Ill. S. Ct. R. 402(c) (eff. July 1, 1997).

¶ 14 The court explained to the defendant that he was entitled to a sentencing hearing, at which he could present evidence favorable to him, but the defendant stated that he "wish[ed] to waive" such a hearing. The court agreed to the negotiated sentence and imposed a prison term of 75 years,

plus 3 years of mandatory supervised release. The court dismissed the other counts against the defendant.

¶ 15 After a brief conference between counsel and the defendant, counsel informed the court that the defendant's guilty plea, although it was "rational and reasoned" and "free and voluntary," was made "contrary to the advice of counsel given over several weeks." Immediately, the court asked the defendant whether, in light of counsel's remarks, he "still wish[ed] to persist in this plea," and the defendant answered, "Yes, sir."

¶ 16 Finally, the court thoroughly admonished the defendant about his right to appeal, including the need to file, within 30 days of the plea-and-sentencing date, a motion to withdraw plea, setting forth the grounds therefor. See Ill. S. Ct. R. 605 (eff. Oct. 1, 2001). The defendant indicated his understanding of his appeal rights. The court entered a written judgment and sentence.

¶ 17 The defendant did not file a postplea or postsentencing motion. He did not attempt a direct appeal. For more than 12 years, this case regarding the defendant lay dormant.

¶ 18 C. Initial Postconviction Proceeding; Appeal

¶ 19 Then, on July 21, 2016, the defendant filed a *pro se* petition for relief under the Post-Conviction Hearing Act (725 ILCS 5/122-1 *et seq.* (West 2014)). In his postconviction petition, the defendant asserted five claims that his 75-year prison sentence violated various constitutional provisions, including the Illinois Constitution's proportionate-penalties clause (Ill. Const. 1970, art. I, § 11). Three of those five claims included allegations of ineffective assistance of plea counsel.

¶ 20 On July 29, 2016, the circuit court found that the defendant's postconviction petition was not frivolous or patently without merit. Eventually, the court appointed postconviction counsel who filed, on behalf of the defendant, an amended petition for postconviction relief.

¶ 21 In the amended postconviction petition, the defendant raised three claims, each relating to his sentence. The defendant claimed (1) that his sentence, which is effectively a life sentence, violated both the eighth amendment to the United States Constitution (U.S. Const., amend. VIII (prohibiting “cruel and unusual punishments”)) and the proportionate-penalties clause of the Illinois Constitution (Ill. Const. 1970, art. I, § 11 (requiring that penalties be determined “according to the seriousness of the offense and with the objective of restoring the offender to useful citizenship”)); (2) that his sentence was “in violation of the full panoply of constitutional protections under the Sixth Amendment ‘in conjunction with due process’ ”; and (3) “that the sentencing laws in the state of Illinois, specifically the Truth in Sentencing statute is unconstitutional as applied to him, and that his sentence is unconstitutional where it is based upon that law.” The first and second of these three claims also included allegations of constitutionally ineffective assistance by plea counsel. Within the first claim, the defendant alleged that plea counsel did not conduct plea negotiations in a manner that served the best interests of the defendant, and that he did not arrange for a plea conference under Illinois Supreme Court Rule 402(d) (eff. July 1, 1997). Within the second claim, the defendant alleged that plea counsel had been ineffective for “allow[ing] such a sentence to be imposed without objection or notifying [the defendant] that his sentence was illegal,” and for telling the defendant that he had “lost any rights to appeal,” contrary to the circuit court’s admonition. The State filed an answer to the amended postconviction petition.

¶ 22 On March 25, 2019, the circuit court called the cause for an evidentiary hearing on the defendant’s amended postconviction petition. The defendant, through counsel, first sought to withdraw all the allegations of ineffective assistance of plea counsel that were contained in his

amended postconviction petition. Without objection by the State, those allegations were withdrawn. Witnesses testified and various documents were admitted into evidence.

¶ 23 On June 13, 2019, the circuit court entered a written judgment that denied the defendant's amended postconviction petition. The court found no constitutional violations in connection with the defendant's sentence or the sentencing laws that were applicable to him. The defendant appealed. The circuit court appointed OSAD as his appellate attorney.

¶ 24 On appeal to this court, the defendant argued only that the circuit court erred in denying his postconviction petition where the defendant made a substantial showing that his 75-year prison sentence violated the Illinois proportionate-penalties clause as applied to him. The defendant relied heavily on the reasoning in *Miller v. Alabama*, 567 U.S. 460 (2012) (mandatory life sentence without parole for juvenile offenders violates eighth amendment prohibition against cruel and unusual punishments).

¶ 25 On March 29, 2022, this court affirmed the circuit court's denial of the defendant's postconviction petition. This court found that the defendant had failed to establish that he suffered any deprivation of his constitutional rights. See *People v. Hernandez*, 2022 IL App (5th) 190255-U.

¶ 26 D. Motion for Leave to File a Successive Postconviction Petition

¶ 27 On September 8, 2025, the defendant filed the document that is the subject of the instant appeal—a *pro se* motion for leave to file a successive postconviction petition pursuant to the Post-Conviction Hearing Act (725 ILCS 5/122-1 *et seq.* (West 2024)). Accompanying the motion was the proposed successive postconviction petition. Attached to the proposed postconviction petition were supporting documents that included, *inter alia*, the “evaluation report” on the defendant prepared by clinical psychologist Dr. Kuncel and dated April 11, 2003, the “amended evaluation

report” prepared by Dr. Kuncel and dated April 14, 2003, and numerous records in the criminal case from the Illinois State Police, Division of Forensic Services, from 2000 and 2001.

¶ 28 In the motion for leave to file a successive petition, the defendant briefly described the various postconviction claims that he sought to raise. The defendant claimed that plea counsel had provided ineffective assistance when he failed to prepare a defense for trial; when he failed to engage in plea negotiations apart from receiving the State’s offers; when he failed to advise the defendant about a formal sentencing hearing; when he failed to advise the defendant about, or to engage in, a Rule 402(d) plea conference; when he reached a plea agreement with the State that included a sentence that violated the Illinois proportionate-penalties clause (Ill. Const. 1970, art. I, § 11); when he failed to present mitigating evidence; and when he told the defendant that an appeal could not be taken. As a result of the ineffective assistance, the defendant “capitulated in the 11th hour” and pleaded guilty “as an act of self-preservation.” Plus, the defendant asserted that “[his] indictment was wrongfully procured through the improper use of his coerced and involuntary statements by the prosecution, who also subsequently ‘negotiated’ his guilty plea based on the same tainted evidence.”

¶ 29 In addition to the postconviction claims that the defendant mentioned in his motion for leave to file a successive petition, the defendant asserted the following claims in his proposed successive petition. The defendant claimed that plea counsel had provided ineffective assistance when he waived a preliminary hearing; when he “willfully failed to argue [at the suppression hearing] the obvious unconstitutionality of the long and coercive police interrogation”; when he refused the defendant’s request to file an interlocutory appeal from the circuit court’s denial of the defendant’s motion to suppress statements; when he failed to assert and to argue, at the suppression hearing, allegations of police coercion; when he failed to cross-examine a State’s witness at the

suppression hearing regarding a promise of leniency; when he failed to submit to the court the psychological report prepared by Dr. Ruth Kuncel, dated April 11, 2003; when he failed to “conduct any independent investigation with a forensic expert” in order to fashion a defense and defense strategies; when he allowed the defendant to waive a sentencing hearing without advising him of the impact of a waiver on the court’s consideration of mitigating evidence or whether to accept the plea agreement; and when he failed to present, at the plea hearing or at a sentencing hearing, mitigating evidence from the personal and family history of the defendant, including his abuse of drugs and alcohol from ages 14 to 18. The defendant also sought to claim: that his right to the due process of law had been violated where both the charge against him and his plea of guilty had been “procured solely through the improper use of a coerced and involuntary statement” to police; that the defendant’s guilty plea was void *ab initio*, in part because he was 18 years old at the time of his arrest, he faced the death penalty, and he was detained in a “high aggression” cell block for approximately three and one-half years prior to his pleading guilty; that his plea agreement violated the due-process principle of fundamental fairness where the parties had inequitable bargaining power and the defendant’s judgment was immature; and that during police questioning, his will was overborne by hours of unrelenting questioning, false promises, and threats.

¶ 30 On September 23, 2025, the circuit court entered an order denying the motion for leave to file. The court found that the defendant had failed to satisfy the “cause” prong of the cause-and-prejudice test in that all the claims of ineffective assistance of plea counsel that he sought to raise in a successive petition were claims that he already had raised in his initial postconviction proceedings. The court cited *People v. Montanez*, 2023 IL 128740, for the statement that “there can be no cause for failing to raise a claim in the initial proceeding when the claim was, in fact,

raised in that proceeding.” (The court in *Montanez* was actually quoting the court in *People v. Conway*, 2019 IL App (2d) 170196, ¶ 25.) Once the court found that cause had not been shown, it saw no reason to consider prejudice.

¶ 31 The defendant filed a timely notice of appeal, thus perfecting the instant appeal. The circuit court appointed OSAD to represent the defendant on appeal.

¶ 32 II. ANALYSIS

¶ 33 In the brief that accompanies its *Finley* motion, OSAD presents, as its sole potential issue, the question of whether the circuit court erred in denying the defendant leave to file a successive postconviction petition. OSAD concludes that there would be no arguable merit to any argument that the denial of leave was erroneous. The defendant does not object to OSAD’s *Finley* motion. This court agrees that the circuit court did not err in denying the defendant leave to file a successive petition.

¶ 34 The Post-Conviction Hearing Act (Act) (725 ILCS 5/122-1 *et seq.* (West 2024)) 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 (2009). Only one postconviction petition is contemplated by the Act. 725 ILCS 5/122-1(f), 122-3 (West 2024); *People v. Holman*, 191 Ill. 2d 204, 210 (2000) (“The Act generally limits a defendant to one post-conviction petition.”). A defendant must obtain the circuit court’s leave in order to file a successive postconviction petition. 725 ILCS 5/122-1(f) (West 2024). To obtain leave to file a successive postconviction petition, a defendant must either: (1) show cause and prejudice for the failure to raise a claim during his initial postconviction proceeding or (2) set forth a colorable claim of actual innocence. *People v. Pitsonbarger*, 205 Ill. 2d 444, 459 (2002). In the instant appeal, the defendant did not set forth an actual innocence claim.

¶ 35 Cause is defined as “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 2024). Prejudice is established 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.” *Id.* Circuit courts determine whether cause and prejudice have been shown by conducting “a preliminary screening” to determine whether the motion adequately alleges facts that make a *prima facie* showing of cause and prejudice. *People v. Bailey*, 2017 IL 121450, ¶ 24. Cause and prejudice must be shown for each individual claim that the defendant seeks to raise. *Pitsonbarger*, 205 Ill. 2d at 462. Both prongs of the cause-and-prejudice test must be satisfied in order for a defendant to obtain leave of court to file a successive postconviction petition. *People v. Guerrero*, 2012 IL 112020, ¶ 15. The filing of a successive postconviction petition is “highly disfavored.” *Bailey*, 2017 IL 121450, ¶ 39. Where a defendant files a motion for leave to file a successive postconviction petition but fails to make a *prima facie* showing of both cause and prejudice, the circuit court must deny the motion. *People v. Smith*, 2014 IL 115946, ¶ 35.

¶ 36 This court reviews *de novo* the circuit court’s denial of a defendant’s motion for leave to file a successive postconviction petition. *People v. Robinson*, 2020 IL 123849, ¶ 39. Under a *de novo* standard, this court reviews only the circuit court’s judgment, not the reasons cited for the judgment, and may affirm a correct judgment on any basis supported by the record. *People v. Anderson*, 401 Ill. App. 3d 134, 138 (2010).

¶ 37 Regardless of what else can be said about the defendant’s motion for leave to file a successive postconviction petition, it is clear that the motion did not establish cause for the defendant’s failure to raise his claims in his initial postconviction proceeding. The defendant filed his motion for leave on September 8, 2025. All the claims that he sought to raise in a successive

proceeding arose from facts that were known to the defendant at the time of his initial postconviction proceeding, which spanned from 2016 to 2019. (Indeed, those claims were based on facts that were known to the defendant at the time of his guilty plea on November 7, 2003.) Nothing impeded or prevented him from raising those claims during the initial postconviction proceeding. In fact, some of those claims—such as plea counsel’s alleged failure to engage in plea negotiations, and his failure to arrange for a Rule 402(d) plea conference—were raised in the initial postconviction proceeding, though they were not pursued or were withdrawn just prior to the evidentiary hearing on March 25, 2019. “There can be no cause for failing to raise a claim in the initial proceeding when the claim was, in fact, raised in that proceeding.” (Internal quotation marks omitted.) *People v. Montanez*, 2023 IL 128740, ¶ 106.

¶ 38 Because the defendant failed to allege facts that made a *prima facie* showing of cause, there is no need to address prejudice. *Guerrero*, 2012 IL 112020, ¶ 15. The circuit court properly denied the motion for leave to file a successive postconviction petition. Denial was not erroneous.

¶ 39 III. CONCLUSION

¶ 40 For the reasons stated, there would be no merit to any argument that the circuit court erred in denying the defendant’s motion for leave to file a successive postconviction petition. Accordingly, this court grants OSAD leave to withdraw as counsel and affirms the circuit court’s order denying the defendant’s motion for leave.

¶ 41 Motion granted; judgment affirmed.