

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) 210424-U

NO. 4-21-0424

IN THE APPELLATE COURT

OF ILLINOIS

FOURTH DISTRICT

FILED

July 26, 2022

Carla Bender

4th District Appellate

Court, IL

THE PEOPLE OF THE STATE OF ILLINOIS,)	Appeal from the
Plaintiff-Appellee,)	Circuit Court of
v.)	Macon County
KYLE L. WRIGHT,)	No. 07CF824
Defendant-Appellant.)	
)	Honorable
)	Thomas E. Griffith Jr.
)	Judge Presiding.

JUSTICE ZENOFF delivered the judgment of the court.
Presiding Justice Knecht and Justice Cavanagh concurred in the judgment.

ORDER

¶ 1 *Held:* The trial court’s order denying defendant leave to file a successive postconviction petition was affirmed. Defendant failed to make a *prima facie* showing of “cause” for filing a successive petition.

¶ 2 Defendant, Kyle L. Wright, appeals an order denying leave to file a successive petition pursuant to the Post-Conviction Hearing Act (Act) (725 ILCS 5/122-1 *et seq.* (West 2020)). Defendant claims that his *de facto* life sentence for a crime that he committed when he was 20 years old violates the proportionate-penalties clause of the Illinois Constitution (Ill. Const. 1970, art. I, § 11). For the following reasons, we affirm.

¶ 3 I. BACKGROUND

¶ 4 In 2008, a jury found defendant guilty of first degree murder (720 ILCS 5/9-1(a)(1) (West 2006)) in connection with the shooting death of Derrick Matthews. The jury also found that defendant personally discharged a firearm that proximately caused Matthews’s

death, subjecting defendant to a 25-year sentencing enhancement. See 730 ILCS 5/5-8-1(a)(1)(d)(iii) (West 2006).

¶ 5 At defendant’s sentencing hearing in April 2008, his counsel asked the court to consider defendant’s age. Counsel also briefly argued that the mandatory firearm enhancement was an unconstitutional “disproportionate penalty.” The trial court sentenced defendant to 55 years in prison. In his motion to reconsider the sentence, defendant argued that the court abused its discretion in fashioning the sentence. Defendant also contended that the firearm enhancement was unconstitutional because it (1) constituted a cruel and unusual punishment and (2) violated his right to equal protection, in that it treated similarly situated defendants (persons convicted of murder) differently. The court denied defendant’s motion to reconsider the sentence.

¶ 6 On direct appeal, defendant challenged a jury instruction and argued that the court considered improper aggravating sentencing factors. We affirmed the judgment. *People v. Wright*, No. 4-08-0472 (2009) (unpublished order under Illinois Supreme Court Rule 23). We determined that defendant forfeited his sentencing argument by failing to raise it in his motion to reconsider the sentence. We also determined that defendant failed to demonstrate plain error.

¶ 7 In 2011, defendant filed a *pro se* postconviction petition asserting claims that are irrelevant to the present appeal. The trial court summarily dismissed the petition, and we affirmed that judgment. *People v. Wright*, 2013 IL App (4th) 110822, ¶ 35.

¶ 8 In December 2020, defendant filed a *pro se* petition pursuant to section 2-1401 of the Code of Civil Procedure (735 ILCS 5/2-1401 (West 2020)). As his requested relief, defendant sought access to “parole review” in accordance with a statute that was enacted after he was sentenced. See 730 ILCS 5/5-4.5-115(b) (West 2020) (allowing young-adult offenders who are sentenced after June 1, 2019, for first degree murder to petition the Prisoner Review Board

for release from prison after serving 20 years). On March 2, 2021, the trial court *sua sponte* dismissed defendant’s petition. Defendant appealed that judgment, which is the subject of a separate appeal (*People v. Wright*, No. 4-21-0165 (2022) (unpublished summary order under Illinois Supreme Court Rule 23(c))).

¶ 9 On March 29, 2021, defendant filed a *pro se* motion seeking leave to file a successive postconviction petition. Defendant sought to present an as-applied challenge to his sentence pursuant to the proportionate-penalties clause of the Illinois Constitution (Ill. Const. 1970, art. I, § 11). Relying generally on the reasoning of *Miller v. Alabama*, 567 U.S. 460 (2012), and its progeny, defendant alleged that the sentencing court did not adequately consider his “youth or rehabilitative potential.”

¶ 10 In his motion, defendant recognized that it was his burden to demonstrate both “cause” and “prejudice” for failing to bring this claim in his original postconviction petition. See 725 ILCS 5/122-1(f) (West 2020) (stating leave of court to file a successive petition “may be granted only if a petitioner demonstrates cause for his or her failure to bring the claim in his or her initial post-conviction proceedings and prejudice results from that failure”). As for cause, defendant contended that his proportionate-penalties claim was based on recent changes in the “societal and legal landscape.” Therefore, defendant argued, this claim was “not reasonably available to him before.” For example, defendant cited section 5-4.5-115(b) of the Unified Code of Corrections (730 ILCS 5/5-4.5-115(b) (West 2020)), which, as mentioned above, was enacted after he was sentenced and allows certain young-adult offenders to petition the Prisoner Review Board for parole review.

¶ 11 In attempting to demonstrate prejudice, defendant alleged that he was serving a *de facto* life sentence. He argued that such sentence was unconstitutional because it violated the

proportionate-penalties clause and did not include the right to parole review. Although included under the “cause” section of his motion, defendant included the following allegations that were relevant to his attempt to demonstrate prejudice:

“Since elementary school, petitioner had suffered difficulties functioning at a normal grade level. Teachers/school staff questioned petitioner’s mental health—and continued to place him in different classes—and told him that he was not a normal functioning kid. These conditions aligned with a series of dysfunctions at home including (lack of food; no utilities such as lights, water, heat; home unkempt; and abuse)—altered petitioner’s development and growth. Petitioner started smoking weed, drinking, and using PCP, pills, and meth before reaching 8th grade—and continued to fall behind in his grades, tests, and skill set. By the age of 12, petitioner was forced to adapt to problematic schools dealing with fights, gangs, shootings, beatings, drugs, and liquor. The area where petitioner was raised was heavily exposed to drugs, gangs, prostitution, police brutality, and ongoing violence. Petitioner attended numerous youth funerals, saw extreme abuses of drugs, alcohol, and suffered being shot, stabbed, hit by a car, and serious head injuries. By the age of 15, petitioner continued to experience problems in high school, was referred to see a psychiatrist numerous times, and could not keep up/dropped out. Throughout petitioner’s incarceration, he has shown signs of maturity and a form of rehabilitative potential for useful citizenship. Petitioner has acquired his G.E.D. and wants to work, pay taxes, vote, and assist his community.”

Defendant further alleged that he “intends to present and make a showing that his mental health condition are of nature [*sic*] that he can and will outgrow his conditions that he lived with as a functional equivalent of a juvenile because of those conditions.”

¶ 12 On June 24, 2021, the court denied defendant’s motion for leave to file a successive postconviction petition. The court reasoned that defendant cited no authority supporting his position that it violated the proportionate-penalties clause to sentence a 20-year-old offender to 55 years in prison for murder. The court also noted that section 5-4.5-115(b) of the Unified Code of Corrections did not apply to defendant, as he was sentenced before June 1, 2019.

¶ 13 Defendant timely appealed.

¶ 14 II. ANALYSIS

¶ 15 Defendant argues that he made a *prima facie* showing of both cause and prejudice to justify a successive postconviction petition. In presenting his argument, defendant relies heavily on cases from the First District of the Appellate Court. Although he recognizes that our decision in *People v. Haines*, 2021 IL App (4th) 190612, contradicts his argument and the First District cases, he contends that *Haines* was “wrongly reasoned and wrongly decided.” The State maintains that defendant has failed to demonstrate either cause or prejudice.

¶ 16 The Act allows a prisoner to assert that there was a “substantial denial” of his or her constitutional rights in the proceedings that resulted in his or her conviction. 725 ILCS 5/122-1(a)(1) (West 2020). Postconviction petitions initiate collateral proceedings that “ ‘focus on constitutional claims that have not and could not have been previously adjudicated.’ ” *People v. Dorsey*, 2021 IL 123010, ¶ 31 (quoting *People v. Holman*, 2017 IL 120655, ¶ 25). Accordingly, “the doctrine of *res judicata* bars issues that were raised and decided on direct

appeal, and forfeiture precludes issues that could have been raised but were not.” *Dorsey*, 2021 IL 123010, ¶ 31.

¶ 17 The Act contemplates one postconviction petition, so a defendant “faces ‘immense procedural default hurdles when bringing a successive postconviction petition.’ ” *Dorsey*, 2021 IL 123010, ¶ 32 (quoting *People v. Davis*, 2014 IL 115595, ¶ 14). A defendant must seek leave of court to file a successive petition, demonstrating both “ ‘cause’ for the failure to raise the claim in the initial petition and that ‘prejudice’ resulted from that failure.” *Dorsey*, 2021 IL 123010, ¶ 32. The Act specifies that “a prisoner shows cause by identifying 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 2020). “Prejudice” means 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 2020).

¶ 18 At the leave-to-file stage, “the court must determine whether defendant has made a *prima facie* showing of cause and prejudice.” *People v. Bailey*, 2017 IL 121450, ¶ 24. A trial court should deny leave to file a successive postconviction petition “when it is clear from a review of the successive petition and supporting documents that the claims raised fail as a matter of law or are insufficient to justify further proceedings.” *Dorsey*, 2021 IL 123010, ¶ 33. We review *de novo* an order denying leave to file a successive petition. *Dorsey*, 2021 IL 123010, ¶ 33.

¶ 19 We hold that defendant failed to make a *prima facie* showing of cause to justify a successive postconviction petition. *Haines* is dispositive.

¶ 20 The defendant in *Haines* was 18 years old when he committed a murder that resulted in a 55-year prison sentence. *Haines*, 2021 IL App (4th) 190612, ¶ 1. In his direct appeal, the defendant argued that his “ ‘sentence was excessive because the trial court failed to consider mitigating factors such as [his] youth, nonviolent criminal history, and drug addiction.’ ” *Haines*, 2021 IL App (4th) 190612, ¶ 7 (quoting *People v. Haines*, No. 4-06-0549 (2007) (unpublished order under Illinois Supreme Court Rule 23)). We rejected that claim in the defendant’s direct appeal. *Haines*, 2021 IL App (4th) 190612, ¶¶ 7-8. In 2008, the defendant filed a postconviction petition asserting claims unrelated to his sentence. *Haines*, 2021 IL App (4th) 190612, ¶ 10. The trial court denied that petition following an evidentiary hearing, and we affirmed that judgment in 2013. *Haines*, 2021 IL App (4th) 190612, ¶¶ 10-11. In 2019, the defendant sought leave to file a successive postconviction petition raising both a proportionate-penalties challenge and an eighth-amendment challenge to his sentence, likening his situation to that of a juvenile offender. *Haines*, 2021 IL App (4th) 190612, ¶ 12. The trial court denied the defendant leave to file that petition. *Haines*, 2021 IL App (4th) 190612, ¶ 13.

¶ 21 We affirmed the judgment. We determined that the defendant’s claim was *res judicata*, as it was essentially the same claim that he had raised on direct appeal, albeit “dressed *** up *** in constitutional clothing.” *Haines*, 2021 IL App (4th) 190612, ¶ 21. Furthermore, following a lengthy analysis, we held that the defendant failed to show cause to justify a successive postconviction petition. See *Haines*, 2021 IL App (4th) 190612, ¶¶ 23-57. In summary, we noted that the statutory phrase “objective factor that impeded his or her ability to raise a specific claim” (725 ILCS 5/122-1(f) (West 2020)) was borrowed from federal *habeas corpus* law. *Haines*, 2021 IL App (4th) 190612, ¶ 43. After looking to federal law, we discerned the following standard:

“If, in the exercise of reasonable diligence, a claim can be built out of existing legal materials, the defendant has to build the claim without waiting for someone else in another case to do so. Defendants cannot wait until a claim falls ready-made into their lap. Some assembly may be required. Ease of argument is not the standard.” *Haines*, 2021 IL App (4th) 190612, ¶ 45.

We noted that this standard was consistent with Illinois law: “ ‘[T]he lack of precedent for a position,’ our supreme court says, ‘differs from “cause” for failing to raise an issue, and a defendant must raise the issue, even when the law is against him, in order to preserve it for review.’ ” *Haines*, 2021 IL App (4th) 190612, ¶ 45 (quoting *People v. Guerrero*, 2012 IL 112020, ¶ 20).

¶ 22 In *Haines*, we noted that, “[y]ears before defendant’s initial postconviction proceeding in 2008, Illinois courts recognized as-applied claims under the proportionate-penalties clause.” *Haines*, 2021 IL App (4th) 190612, ¶ 46. Additionally, for decades, “Illinois case law [has] held that the proportionate-penalties clause required the sentencing court to take into account the defendant’s ‘youth’ and ‘mentality.’ ” *Haines*, 2021 IL App (4th) 190612, ¶ 47 (collecting cases). To that end, “Illinois courts also have long been aware that less than mature age can extend into young adulthood—and they have insisted that sentences take into account that reality of human development.” *Haines*, 2021 IL App (4th) 190612, ¶ 47.

¶ 23 Against this backdrop, we concluded that “in 2008 defendant had the essential legal tools to raise his present proposed claim under the proportionate-penalties clause.” *Haines*, 2021 IL App (4th) 190612, ¶ 49. This was true even though subsequent developments in the case law “would have made it easier for defendant to raise his claim.” *Haines*, 2021 IL App (4th) 190612, ¶ 49. According to *Haines*, “[t]he emergence of some helpful support for a claim that

already was raisable is not cause.” *Haines*, 2021 IL App (4th) 190612, ¶ 51. Having resolved the appeal based on the application of *res judicata* and defendant’s failure to establish cause to file a successive postconviction petition, we did not specifically address the “prejudice” element of the test.

¶ 24 Here, under *Haines*’s reasoning, defendant has not made a *prima facie* showing of cause for failing to present his proportionate-penalties claim in his initial postconviction petition. See also *People v. Kuehner*, 2022 IL App (4th) 200325, ¶¶ 100-107 (embracing *Haines*’s reasoning). As explained in *Haines*, although subsequent case law and statutory changes might have provided helpful support for defendant’s claim, he could have raised this claim in his 2011 postconviction petition or even earlier. As mentioned above, at defendant’s sentencing hearing in 2008, his counsel asserted that the 25-year sentencing enhancement was a “disproportionate penalty.” In his motion to reconsider the sentence, defendant similarly challenged the firearm enhancement as being a cruel and unusual punishment. Although counsel did not develop those arguments at the time, such arguments were similar to the claims that defendant now wants to pursue fourteen years later. In his motion for leave to file a successive postconviction petition, defendant relied heavily on details about his childhood and upbringing. Some of those details were mentioned in the presentence investigation report that was prepared in 2008. All other details would have been known to defendant then. Accordingly, because defendant failed to make a *prima facie* showing of cause, we hold that the trial court properly denied leave to file a successive postconviction petition.

¶ 25 We recognize that the districts of the appellate court disagree about the nature of “cause” as it relates to young-adult offenders who wish to file successive postconviction petitions advancing proportionate-penalties challenges. Compare *People v. Howard*, 2021 IL

App (2d) 190695, ¶ 47 (the Second District agreed with *Haines*) with *People v. Horshaw*, 2021 IL App (1st) 182047, ¶ 124 (the First District concluded that recent developments in case law provided cause for failing to raise a proportionate-penalties claim sooner). At least in the context of juvenile offenders (as opposed to young-adult offenders) who wish to present proportionate-penalty claims in successive postconviction petitions, our supreme court has taken a view of cause that is akin to what we adopted in *Haines*. See *Dorsey*, 2021 IL 123010, ¶ 74 (declaring that *Miller* “does not provide cause for a defendant to raise a claim under the proportionate penalties clause”). Until we receive further guidance from our supreme court as it relates to young-adult offenders, we decline to depart from the reasoning of *Haines*, which we decided just last year.

¶ 26

III. CONCLUSION

¶ 27

For the reasons stated, we affirm the trial court’s judgment.

¶ 28

Affirmed.