

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) 220316-U

NO. 4-22-0316

IN THE APPELLATE COURT

OF ILLINOIS

FOURTH DISTRICT

FILED  
November 23, 2022  
Carla Bender  
4<sup>th</sup> District Appellate  
Court, IL

THE PEOPLE OF THE STATE OF ILLINOIS,	)	Appeal from the
Plaintiff-Appellee,	)	Circuit Court of
v.	)	Peoria County
ANTOINE A. BROWN,	)	No. 99CF811
Defendant-Appellant.	)	
	)	Honorable
	)	Paul P. Gilfillan,
	)	Judge Presiding.

JUSTICE BRIDGES delivered the judgment of the court.  
Justices Turner and Harris concurred in the judgment.

**ORDER**

¶ 1 *Held:* The trial court properly dismissed defendant’s third postconviction petition as defendant could not satisfy the cause-and-prejudice exception for leave to file a successive postconviction petition. The trial court also did not err in denying defendant’s motion for a reduction of sentence, because it was untimely and the court lacked jurisdiction to consider it. Therefore, we affirm.

¶ 2 At issue in this appeal is the trial court’s dismissal of defendant Antoine A. Brown’s postconviction petition and denial of his motion to reduce his sentence. On December 22, 2021, defendant filed his third *pro se* postconviction petition. The petition alleged that defense counsel coerced him into accepting a plea agreement and failed to request a fitness hearing. Then on December 27, 2021, defendant filed a *pro se* motion for a sentence reduction. On March 15, 2022, the trial court dismissed the postconviction petition finding it frivolous and patently without merit. The trial court also denied the motion to reduce defendant’s sentence. Defendant filed this timely appeal, and the Office of the State Appellate Defender (OSAD) was appointed to represent him.

¶ 3 Appellate counsel concluded this appeal lacks merit. On that basis, OSAD filed with this court a motion for leave to withdraw as counsel, along with a legal memorandum supporting the motion. OSAD served defendant with a copy of the motion and memorandum. This court provided defendant an opportunity to file a response to OSAD's motion or explain why this appeal has merit, but defendant did not take advantage of the opportunity. This court concludes that OSAD's assessment of the instant appeal is correct. Therefore, we grant OSAD's motion to withdraw and affirm.

¶ 4 I. BACKGROUND

¶ 5 The State charged defendant with first degree murder (720 ILCS 5/9-1(a)(2) (West 1998)), alleging that on August 21, 1999, defendant possessed a firearm, having previously been convicted of a felony, and without lawful justification shot and killed Teena Carter, knowing such act created a strong probability of death or great bodily harm. Defendant pled guilty on December 1, 2000. Pursuant to the fully negotiated terms of the plea, the court sentenced defendant to a term of 28 years' imprisonment.

¶ 6 Defendant filed a timely motion to withdraw his plea, in which he alleged that his plea was not knowingly and voluntarily entered. The circuit court denied that motion. Defendant appealed, contending that (1) the trial court erred in failing to make an independent determination of his fitness to stand trial and (2) it abused its discretion in denying his motion to withdraw his guilty plea.<sup>1</sup> This court affirmed, finding that the record did not contain facts to support a finding that there was a bona fide doubt as to defendant's fitness and that the trial court did not abuse its

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<sup>1</sup>On his first direct appeal, this court determined the proper admonishment consistent with Illinois Supreme Court Rule 605(c) (eff. Oct. 5, 2000) had not been given to defendant and, as a consequence, remanded the case back to the trial court. *People v. Brown*, No. 3-01-0246 (2002) (unpublished summary order under Illinois Supreme Court Rule 23(c)).

discretion in denying defendant's motion to withdraw his guilty plea. *People v. Brown*, No. 3-02-1004 (2004) (unpublished order under Illinois Supreme Court Rule 23).

¶ 7 On May 16, 2005, defendant filed his first *pro se* petition for postconviction relief. Defendant claimed that (1) he received ineffective assistance of counsel because trial counsel coerced him into pleading guilty, (2) the trial court failed to investigate the effects of the medication defendant was taking at the time of his plea, and (3) counsel failed to thoroughly investigate defendant's claim that he accidentally shot the victim. The trial court dismissed the petition as frivolous and patently without merit. Defendant then filed a motion to reconsider, which was also denied. OSAD was appointed to represent defendant on appeal.

¶ 8 OSAD subsequently filed a motion, with an accompanying brief, to withdraw as appellant counsel, alleging they were unable to find any arguable errors warranting the continuation of the appeal. This court agreed with OSAD and granted their motion to withdraw, concluding (1) that the petition for postconviction relief had raised the same issues in his previous appeal, (2) that the testimony and other evidence refuted defendant's claims, and (3) that the appeal was "wholly frivolous." *People v. Brown*, No. 3-05-0489 (2006) (unpublished summary order under Illinois Supreme Court Rule 23(c)).

¶ 9 On January 27, 2017, defendant filed a *pro se* "Motion to enforce terms of plea agreement or withdraw the plea in its entirety." The trial court denied defendant's motion without prejudice and advised defendant he was free to refile the same claims in the form of a postconviction petition.

¶ 10 On March 6, 2017, defendant filed a *pro se* postconviction petition that incorporated his previous motion. The trial court then appointed counsel to represent defendant and docketed for further proceedings.

¶ 11 On June 8, 2018, appointed counsel filed a motion to withdraw, arguing that the court could not address defendant's petition because defendant was not granted leave to file a successive petition and that under the facts of the case, defendant would be unable to demonstrate the cause and prejudice required to attain any relief. Defendant filed a *pro se* objection to counsel's motion.

¶ 12 On July 13, 2018, the trial court granted counsel's motion to withdraw and dismissed the postconviction petition as being "meritless and patently frivolous." The court further ruled that no prejudice could be demonstrated from the record and no leave was given to file a successive petition. Defendant appealed.

¶ 13 On March 4, 2021, this court affirmed the trial court, holding that defendant's failure to seek leave to file a successive postconviction petition precluded the court from considering the merits of his petition. *People v. Brown*, 2020 IL App (3d) 180535-U.

¶ 14 On December 22, 2021, defendant filed his third *pro se* postconviction petition. The petition alleged defense counsel coerced him into accepting a plea agreement and failed to request a fitness hearing. Then on December 27, 2021, defendant filed a *pro se* motion for a sentence reduction. On March 15, 2022, the trial court denied the petition as frivolous and patently without merit, noting that defendant's postconviction claims had been "advanced *unsuccessfully* time and time again." (Emphasis in original.) The trial court also rejected the motion to reduce defendant's sentence, indicating that the State should have raised said motion. Defendant filed this timely appeal, and OSAD was appointed to represent him.

¶ 15

## II. ANALYSIS

¶ 16

### A. Defendant's Failure to Seek Leave to File a Successive Petition

¶ 17 Defendant appeals the dismissal of his postconviction petition and denial of his motion to reduce his sentence. OSAD first contends it can raise no colorable argument that the trial court erred in dismissing defendant’s postconviction petition because any assertion he satisfied the cause-and-prejudice test to file a successive petition would be meritless. We agree. We begin by addressing whether defendant’s third postconviction petition should be considered a successive postconviction petition.

¶ 18 The Post-Conviction Hearing Act (Act) (725 ILCS 5/122-1 *et seq.* (West 2020)) is a legislative creation that permits incarcerated defendants to collaterally attack their conviction by asserting that they suffered a substantial violation of their constitutional rights at trial. *Id.* § 122-1(a); see *People v. Edwards*, 197 Ill. 2d 239, 243-44 (2001).

¶ 19 Section 122-1(f) of the Act provides in pertinent part as follows:

“Only one petition may be filed by a petitioner under this Article without leave of the court. Leave of court 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.” 725 ILCS 5/122-1(f) (West 2020).

¶ 20 “[B]oth the language of the Act and our own case law make clear that only one postconviction proceeding is contemplated under the Act.” *Edwards*, 2012 IL 111711, ¶ 22. Under section 122-3 of the Act (725 ILCS 5/122-3 (West 2020)), “[a]ny claim of substantial denial of constitutional rights not raised in the original or an amended petition is waived.” Thus, section 122-1(f) represents an exception to this rule, permitting a successive petition, but only if the defendant first obtains leave of court. *People v. Tidwell*, 236 Ill. 2d 150, 157 (2010).

¶ 21 Even though the Act contemplates only one postconviction proceeding, there are two bases that relax the bar against successive proceedings. *Edwards*, 2012 IL 111711, ¶ 22. The first is “when a petitioner can establish cause and prejudice for the failure to raise the claim earlier.” (Internal quotation marks omitted.) *Id.* The second basis is the “fundamental miscarriage of justice” exception. *Id.* ¶ 23. (“In order to demonstrate a miscarriage of justice to excuse the application of the procedural bar, a petitioner must show actual innocence.”).

¶ 22 It is a defendant’s burden to obtain leave under one of these two exceptions before further proceedings may follow. *Id.* ¶ 24. To obtain leave of court, a defendant “must submit enough in the way of documentation to allow a circuit court to make that determination.” (Internal quotation marks omitted.) *Id.* A defendant need not file a separate motion seeking leave to file a successive postconviction petition when the trial court voluntarily considers and rules on the petition, but the defendant retains the burden to obtain leave with proper documentation under one of section 122-1(f)’s exceptions. *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.

¶ 23 OSAD contends that because defendant had previously filed two postconviction petitions, the instant petition was clearly a successive petition that required him to first obtain leave of court to file it by satisfying the cause-and-prejudice test. We agree and conclude that defendant could not satisfy the cause-and-prejudice exception here because he had previously raised these very same claims in his motion to withdraw his guilty plea and in his 2005 post-conviction petition. 725 ILCS 5/122-1(f) (West 2020) (exceptions for previously unraised claims); *id.* § 122-3 (waiver

of claims not raised in original or amended petition). Therefore, the trial court properly dismissed the petition on the basis that defendant's claims had already been raised and denied, and we agree there is no issue or arguable merit for appeal.

¶ 24 B. Motion for a Sentence Reduction

¶ 25 Defendant petitioned the trial court for a sentence reduction because he has served more than 22 years of the sentence imposed. Defendant made no argument concerning the propriety of the sentence. OSAD asserts that because defendant entered a fully-negotiated guilty plea, one in which he bargained for and received a 28-year prison sentence, he is now barred from challenging or seeking a sentence reduction. We agree.

¶ 26 In *People v. Evans*, 174 Ill. 2d 320 (1996), the supreme court considered a case in which the defendant entered into a fully negotiated plea agreement with the State and subsequently challenged his sentence as excessive, despite the fact he was sentenced according to the State's recommendation per the agreement. *Id.* at 322-23 In rejecting the defendant's argument, the supreme court reasoned, "[t]o permit a defendant to challenge his sentence without moving to withdraw the guilty plea \*\*\* would vitiate the negotiated plea agreement he entered into with the State." *Id.* at 332. The court concluded that to challenge a sentence as excessive following a fully negotiated plea, the plea must first be withdrawn. *Id.*

¶ 27 As pointed out earlier, defendant here moved twice to withdraw his plea, which relief was denied by this court. Moreover, a defendant who enters a negotiated guilty plea must move to withdraw his guilty plea within 30 days of the imposition of sentence. *Id.* at 322-23; Ill. S. Ct. R. 604(d) (eff. Nov. 1, 2000). In this case defendant's request is more than 20 years late. Consequently, the trial court did not err in denying defendant's motion for a sentence reduction, as there is no authority to allow such a "late" motion to reconsider a sentence. Because of our

ruling here, we need not decide whether the trial court properly stated that only the state's attorney could file such a motion, pursuant to section 122-9 of the Act (725 ILCS 5/122-9 (2020)).

¶ 28 Accordingly, we grant OSAD's motion to withdraw and affirm the trial court's dismissal of defendant's petition as frivolous and patently without merit and the denial of his sentence reduction motion.

¶ 29 **III. CONCLUSION**

¶ 30 We affirm the Peoria County circuit court's judgment for the reasons stated.

¶ 31 Affirmed.