

NOTICE
This order was filed under Supreme Court Rule 23 and may not be cited as precedent by any party except in the limited circumstances allowed under Rule 23(e)(1).

2012 IL App (4th) 120211-U
NO. 4-12-0211
IN THE APPELLATE COURT
OF ILLINOIS
FOURTH DISTRICT

FILED
December 17, 2012
Carla Bender
4th District Appellate
Court, IL

THE PEOPLE OF THE STATE OF ILLINOIS,)	Appeal from
Plaintiff-Appellee,)	Circuit Court of
v.)	Macon County
MICHAEL L. WILLIAMS,)	No. 01CF115
Defendant-Appellant.)	
)	Honorable
)	Timothy J. Steadman,
)	Judge Presiding.

JUSTICE APPLETON delivered the judgment of the court.
Justices Knecht and Turner concurred in the judgment.

ORDER

- ¶ 1 *Held:* Because the law of the case requires the appellate court to adhere to its previous decision that the pleading defendant filed in December 2003 was a postconviction petition and because defendant does not contest the trial court's finding that he failed to show "cause" and "prejudice" within the meaning of section 122-1(f) of the Post-Conviction Hearing Act (725 ILCS 5/122-1(f) (West 2006)), the trial court's judgment denying him leave to file a successive postconviction petition is affirmed.
- ¶ 2 Defendant, Michael L. Williams, who is serving a 50-year term of imprisonment for first degree murder (720 ILCS 5/9-1(a)(1) (West 1992)), appeals from an order denying him leave to file a successive petition for postconviction relief. He argues that, in fact, he never filed a postconviction petition in December 2003 and that the trial court therefore should have accepted the filing of his postconviction petition in March 2006 without requiring him to make the showing of "cause" and "prejudice" necessary to obtain leave to file a successive petition (725 ILCS 5/22-1(f) (West 2006)). Thus, the issue is whether the pleading that he filed in December 2003 was a

postconviction petition.

¶ 3 The parties agree that we should review this issue *de novo*. Actually, as the parties further agree, we already have resolved this issue in a previous decision in this case, *People v. Williams*, No. 4-08-0207, slip order at 14-15 (August 20, 2010) (unpublished order under Supreme Court Rule 23). In our previous decision, we found that the December 2003 petition was indeed a postconviction petition and that defendant therefore had to show "cause" and "prejudice" in order to file a successive postconviction petition. *Id.* The State invokes the doctrine of the law of the case, a doctrine we apply *de novo*. *In re Christopher K.*, 217 Ill. 2d 348, 363-64 (2005). Because we find neither of the exceptions to that doctrine to be applicable, we affirm the trial court's judgment.

¶ 4 I. BACKGROUND

¶ 5 A. The Conviction, the Sentence, and the Direct Appeal

¶ 6 In August 2002, a jury found defendant guilty of the first degree murder of Stephen May (720 ILCS 5/9-1(a)(1) (West 1992)), and in June 2003, the trial court sentenced him to 50 years' imprisonment. On direct appeal, we affirmed the trial court's judgment. *People v. Williams*, No. 4-03-0563 (August 8, 2006) (unpublished order under Supreme Court Rule 23).

¶ 7 B. The First Postconviction Petition

¶ 8 On December 1, 2003, defendant filed a document entitled "Post-Conviction Petition." This document was a preprinted fill-in-the-blank form, in which, "pursuant to 725 ILCS 5/122 *et seq.* (West 1992)," he "move[d] [the] Honorable Court to vacate the judgment" against him in the murder case.

¶ 9 Although defendant signed a sworn verification "that the facts stated in the foregoing Petition for Post-Conviction Relief [were] true and correct in substance and in fact," he really did

not state any facts in the petition other than that he was in jail; that in August 2002, in Macon County, he was convicted of first degree murder; and that he was sentenced to 50 years' imprisonment. He wrote nothing in the blank spaces following the preprinted language in paragraphs 2 and 3:

"2. Review of my conviction and sentence is necessary because of the following violation(s) of my constitutional rights at trial time, in particular:

[blank space.]

3. The specific facts of my case are:

[blank space.]"

¶ 10 On December 4, 2003, the trial court entered an order summarily dismissing the postconviction petition. The dismissal order reads as follows:

"Now comes this Court and, pursuant to 725 ILCS 5/122-2.1(a)(2), dismisses the defendant's petition for post conviction relief for reasons as follows:

1. The Petition is not supported by any accompanying affidavits, records, or other evidence, and the absence thereof is not explained.

2. The Petition fails to set forth the gist of a constitutional claim. The Petition includes a page which states: 'Review of any conviction and sentence is necessary because of the following violation(s) of

my constitutional rights at trial time, in particular:'.
The remainder of the page is blank.

3. The Petition fails to set forth any allegations of fact. The Petition includes a page which states: 'The specific facts of my case are:'. The remainder of the page is blank.

Wherefore, the Court finds that the Petition for Post Conviction Relief is frivolous and patently without merit. The Petition for Post Conviction Relief is dismissed."

¶ 11 Defendant never appealed from this summary dismissal of his December 2003 postconviction petition.

¶ 12 C. The Second Postconviction Petition

¶ 13 On March 13, 2006, defendant filed a document entitled "Motion to Correct Error in 725 ILCS 5/122-1." In this motion, he explained that he had left some parts blank in his December 2003 petition because "he did not have any type of legal assistance in fil[ing] in the blanks." He requested that the trial court allow him to correct this error. He requested that the court "grant him leave to file his timely post-conviction relief pursuant to 725 ILCS 5/122-1 to complete his motion for post-conviction relief with the issues."

¶ 14 On March 22, 2006, although the trial court had not ruled on his "Motion To Correct Error," defendant filed a petition for postconviction relief. Unlike the previous petition, this petition stated numerous reasons why, in defendant's opinion, his constitutional rights were violated in the trial. He also attached supporting affidavits to this petition.

¶ 15 Along with this second postconviction petition, defendant filed a "Motion To Proceed in Forma Pauperis," in which he "request[ed] that he be granted leave to file in forma pauperis the attached post conviction petition." He also moved for the appointment of counsel.

¶ 16 On June 22, 2006, the trial court appointed Brian W. Finney to represent defendant, and on September 20, 2007, Finney filed an amended petition for postconviction relief incorporating defendant's *pro se* petition.

¶ 17 On November 26, 2007, the State moved for the dismissal of the postconviction petition. The trial court granted the State's motion on February 19, 2008, dismissing the petition on the ground that defendant had failed to make a showing of a substantial constitutional violation. Defendant appealed on March 18, 2008.

¶ 18 In September 2009, we held that defendant's March 2006 petition was a successive postconviction petition filed without leave of court and hence filed in violation of section 122-1(f) of the Post-Conviction Hearing Act (725 ILCS 5/122-1(f) (West 2006)). Thus, we affirmed the trial court's judgment but modified the judgment to reflect defendant's procedural default. *People v. Williams*, No. 4-08-0207 (September 29, 2009) (unpublished order under Supreme Court Rule 23).

¶ 19 Defendant petitioned to the supreme court for leave to appeal. In March 2010, the supreme court denied leave to appeal but entered a supervisory order providing as follows:

"In the exercise of this court's supervisory authority, the Appellate Court, Fourth District, is directed to vacate its order in *People v. Williams*, No. 4-08-0207 (September 29, 2009). The appellate court is directed to reconsider its judgment in light of *People v. Tidwell*, 236 Ill. 2d 150 (2010), and *People v. Ortiz*, 235 Ill.

2d 319 (2009), to determine if a different result is warranted." *People v. Williams*, 236 Ill. 2d 544 (2010) (nonprecedential supervisory order denying leave to appeal).

¶ 20 Accordingly, we vacated our earlier order and reconsidered the case in the light of *Tidwell* and *Ortiz*. *Williams*, No. 4-08-0207, slip order at 14 (August 20, 2010). On reconsideration, we adhered to our earlier finding that the 2006 postconviction petition was a successive petition. *Id.* at 17. We said:

"Defendant filed postconviction petitions in 2003 and 2006. In his original and supplemental briefs to this court, defendant argued that the 2006 petition was not successive because the 2003 petition contained blanks and did not state a claim. However, defendant's 2003 petition, labeled as a 'Post-Conviction Petition,' was filed as such and the trial court dismissed defendant's petition as frivolous and patently without merit. The court sent notice of the dismissal to defendant, and defendant failed to appeal. A dismissal as frivolous and patently without merit constitutes a final judgment. 725 ILCS 5/122-2.1(a)(2) (West 2006) (order dismissing petition as frivolous and patently without merit is a final judgment). Because the order dismissing the 2003 petition was a final judgment, defendant's 2006 petition was a successive petition." *Id.* at 17.

¶ 21 We concluded that defendant "arguably requested leave to file a successive postconviction petition by way of his March 22, 2006, motion to proceed in *forma pauperis*, which

stated that defendant 'requests that he be granted leave to file in *forma pauperis* the attached postconviction petition.' " *Id.* at 30. Because it did not appear from the record that the trial court ever ruled on that request (*id.*), we remanded the case with directions that the trial court apply the cause-and-prejudice test in section 122-1(f) (725 ILCS 5/122-1(f) (West 2010)) and on the basis of that test, "rule on defendant's request for leave to file his successive postconviction petition" (*id.* at 32).

¶ 22 On September 13, 2010, on remand, the trial court made the following docket entry:

"The Court has reviewed the pleading filed by Defendant in March 2006 under 725 ILCS 5/122-1(f) pursuant to Fourth District Appellate Court Order 4-08-0207. The Court finds that the Defendant/Petitioner has failed to identify an objective factor that impeded his ability to raise specific claims in the initial post-conviction petition filed in December, 2003. Therefore, Defendant/Petitioner has not demonstrated cause for his failure to bring these claims in his initial post-conviction petition. The Court further finds that Defendant/Petitioner has failed to demonstrate prejudice by showing that claims not raised during his initial post-conviction proceeding so infected the trial that the resulting conviction or sentence violated due process. For these reasons, the Defendant/Petitioner is denied leave of Court to file a Successive Post-Conviction Petition."

¶ 23 This appeal followed.

¶ 24

II. ANALYSIS

¶ 25 Section 122-1(f) of the Post-Conviction Hearing Act (725 ILCS 5/122-1(f) (West 2010)) provides:

"(f) 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. For purposes of this subsection (f): (1) 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; and (2) a prisoner shows prejudice 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."

¶ 26 In his brief, defendant does not contest the trial court's finding that he failed to show "cause" and "prejudice" within the meaning of section 122-1(f). Instead, he argues that his December 2003 petition was not truly a postconviction petition and that his March 2006 petition therefore was not a successive petition. He acknowledges that, in our last order in this case, we decided that the December 2003 petition was indeed a postconviction petition and that the March 2006 petition was therefore a successive postconviction petition. See *Williams*, No. 4-08-0207, slip order at 14-15 (August 20, 2010). Nevertheless, defendant explains: "This issue is being raised again to give this Court an opportunity to reconsider its prior ruling, and to preserve the issue for

review in the Illinois Supreme Court."

¶ 27 As the State points out, if we decide an issue of law in an appeal, our decision becomes the law of the case, and for the sake of uniformity and predictability, we ought to adhere to that decision in a subsequent appeal in the same case unless (1) a higher reviewing court makes a contrary ruling, on the same issue, subsequent to our decision or (2) we find that our prior decision is "palpably erroneous." *Bjork v. Draper*, 404 Ill. App. 3d 493, 501 (2010). Obviously, (1) is inapplicable. That leaves (2).

¶ 28 Defendant argues that our previous decision is erroneous. He reminds us that his December 2003 petition was an empty shell. It alleged no grounds at all—not even unmeritorious grounds—for postconviction relief. He suggests that we should look beyond the label of the petition and recognize the petition for what it was: a nullity. Because he moved for the appointment of counsel at the same time he filed this virtually empty petition, he maintains that his pleadings in December 2003 should be construed as merely a motion to appoint counsel so that he *could* file a postconviction petition.

¶ 29 Although defendant makes a reasonable argument, his argument is not without its problems. First, to accept his argument, we would have to disregard not only the label of his December 2003 petition—"Post-Conviction Petition"—but also some language in the body of the petition, namely, the request that, "pursuant to 725 ILCS 5/122 *et seq.* (West 1992)," the trial court "vacate the judgment."

¶ 30 Second, accepting defendant's argument would entail drawing a seemingly indefensible distinction between a nonexistent statement of grounds and a vacuous statement of grounds. For example, if, using the preprinted form that defendant used, a defendant wrote, without

any further elaboration, that "the State violated due process" or that "defense counsel rendered ineffective assistance," the pleading presumably would qualify as a (frivolous) postconviction petition. If, however, the defendant wrote no grounds at all on the form, the pleading would not count as a postconviction petition. This disparate treatment of the two defendants would seem illogical. It would make no sense to treat the defendant who stated insufficient grounds more harshly than the defendant who stated no grounds at all.

¶ 31 In short, the most defendant has done is establish that our previous order in this case is *arguably* erroneous; he has not established that it is "*palpably* erroneous." (Emphasis added.) *Bjork*, 404 Ill. App. 3d at 501. The error, if it exists, is not clear-cut; it is not "easily perceptible by the mind." Merriam-Webster's Collegiate Dictionary 835 (10th ed. 2000) (definition of "palpable"). A reasonable argument can be made on both sides. Consequently, the law of the case requires that we adhere to our finding that the December 2003 pleading was a postconviction petition and that it was necessary for defendant to show "cause" and "prejudice" in order to file the March 2006 postconviction petition—a showing he does not claim to have made. 725 ILCS 5/122-1(f) (West 2006).

¶ 32 III. CONCLUSION

¶ 33 For the foregoing reasons, we affirm the trial court's judgment and award the State \$50 against defendant in costs.

¶ 34 Affirmed.