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2014 IL App (3d) 120976-U

Order filed October 14, 2014

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IN THE  
APPELLATE COURT OF ILLINOIS  
THIRD DISTRICT

A.D., 2014

THE PEOPLE OF THE STATE OF ILLINOIS,	)	Appeal from the Circuit Court
	)	of the 12th Judicial Circuit,
	)	Will County, Illinois,
	)	
Plaintiff-Appellee,	)	
	)	Appeal No. 3-12-0976
v.	)	Circuit No. 04-CF-1039
	)	
CHRISTOPHER PYLES,	)	
	)	The Honorable
Defendant-Appellant.	)	Richard Schoenstedt,
	)	Judge, Presiding.

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JUSTICE McDADE delivered the judgment of the court.  
Justices Holdridge and Wright concurred in the judgment.

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**ORDER**

¶ 1 *Held:* Leave to file a successive post conviction petition is granted only where the defendant establishes cause for her failure to raise the claim in her initial post conviction proceeding, and prejudice results from that failure.

¶ 2 Defendant, Christopher Pyles, appeals from an order of the circuit court denying his motion for leave to file a successive post conviction petition. We affirm.

¶ 3 **FACTS**

¶ 4 On August 12, 2004, defendant was charged with three counts of first degree murder and one count of armed robbery. On May 5, 2005, pursuant to a fully negotiated plea agreement, defendant agreed to plead guilty to one count of felony murder. In exchange, the State dismissed the remaining counts and agreed not to seek the death penalty.

¶ 5 After finding defendant mentally fit, the circuit court admonished defendant pursuant to Rule 402 and reiterated the terms of the agreement. Defendant told the court that no other promises or threats were made to induce his plea. Defendant stated that he was fully satisfied with the performance of his appointed public defender. The circuit court accepted the factual basis of the plea and sentenced defendant to natural life in prison. The court subsequently admonished defendant of his right to file a motion to withdraw his plea.

¶ 6 On July 15, 2005, sixty-six (66) days after defendant's guilty plea, a privately retained attorney filed a "late motion to withdraw guilty plea" on defendant's behalf. The motion alleged that (1) neither defendant nor his family had been able to reach defendant's public defender to request that she file a motion to withdraw the guilty plea, (2) the foregoing motion was filed as soon as was practicable, and (3) defendant should be allowed to withdraw his guilty plea because he was not taking his psychiatric medication prior to entering the plea. In response, the State filed a motion to strike on the basis that defendant's motion was untimely.

¶ 7 On June 9, 2006, the circuit court granted the State's motion to strike, finding that the court lacked jurisdiction. We subsequently dismissed defendant's appeal for lack of jurisdiction. *People v. Pyles*, 3-06-0443 (June 6, 2007) (unpublished order under Supreme Court Rule 23).

¶ 8 On November 2, 2007, defendant, through his private counsel, filed a post conviction petition. The petition alleged that defendant's plea was involuntary due to the fact defendant was not taking his medications at the time he entered into the plea. The circuit court summarily

dismissed defendant's petition. We subsequently affirmed the dismissal. *People v. Pyles*, 3-08-0346 (March 11, 2009) (unpublished order under Supreme Court Rule 23).

¶ 9 On December 8, 2009, defendant filed a *pro se* petition for relief from judgment. Defendant alleged he and his family were unable to contact his public defender within thirty (30) days of sentencing to ask her to file a motion to withdraw guilty plea. Defendant again argued his plea was involuntary. Lastly, defendant contended that his public defender was ineffective because she pressured him to plead guilty by instilling fear that he would be put to death if he proceeded to trial. The circuit court granted the State's motion to dismiss on the ground that defendant's petition was untimely. We affirmed. *People v. Pyles*, 3-10-0318 (October 12, 2011) (unpublished order under Supreme Court Rule 23).

¶ 10 On September 12, 2012, defendant filed a motion for leave to file a successive petition, which is the subject of this appeal. The successive petition alleged that his public defender was ineffective for: (1) proceeding with defendant's guilty plea after she was informed that defendant's family had retained private counsel, (2) coercing defendant to plead guilty by threatening him with the potential to receive the death penalty, and (3) refusing to file a timely motion to withdraw his guilty plea, which denied him his right to a direct appeal. Defendant attached affidavits from his family and phone records in support of his claims. Defendant generically alleged that the attached material was not available at the time he filed his first post conviction petition.

¶ 11 On October 16, 2012, the circuit court denied defendant's motion for leave to file a successive petition. Specifically, the court found defendant failed to establish cause and prejudice. Defendant appeals.

¶ 12 ANALYSIS

¶ 13 The sole issue on appeal is whether the circuit court erred in denying defendant leave to file a successive post conviction petition. Because defendant has failed to establish "cause," he has no right to a successive post conviction petition under the Post Conviction Hearing Act (the Act) (725 ILCS 5/122-1 *et seq.* (West 2012)).

¶ 14 We review the denial of defendant's motion for leave to file a successive post conviction petition *de novo*. *People v. Anderson*, 402 Ill. App. 3d 1017, 1028-29 (2010). The Act provides a process whereby a prisoner can file a petition asserting that his conviction was the result of a substantial denial of his constitutional rights. 725 ILCS 5/122-1(a)(1) (West 2012). Pursuant to section 122-1(f) of the Act (725 ILCS 5/122-1(f) (West 2012)), defendant is prohibited from filing a successive post-conviction petition without first obtaining leave of court. Such leave is granted only where defendant establishes cause for his failure to raise the claim in his initial post-conviction proceeding, and prejudice results from that failure. 725 ILCS 5/122-1(f) (West 2012). "Cause" is defined as "any objective factor, external to the defense, which impeded the petitioner's ability to raise a specific claim in the initial post-conviction proceeding." *People v. Pitsonbarger*, 205 Ill. 2d 444, 462 (2002). Prejudice occurs where the petitioner is "denied consideration of an error that so infected the entire trial that the resulting conviction or sentence violates due process." *Pitsonbarger*, 205 Ill. 2d at 464.

¶ 15 Upon review, we find the three (3) ineffective assistance of counsel claims contained within defendant's motion for leave could have been presented in his initial post conviction petition. Defendant, however, argues that he satisfied the "cause" test "by submitting newly discovered evidence" – affidavits from his family and phone records. We disagree.

¶ 16 Defendant submitted affidavits from his aunt, grandfather and grandmother. The affidavits all involved claims that: (1) the public defender was pressuring defendant to accept the

plea, (2) the family told defendant to request a continuance prior to pleading guilty because they informed the public defender that they were going to hire private counsel on his behalf, and (3) the family, at the request of defendant, called the public defender several times to request that she file a motion to withdraw guilty plea but she did not return their calls. Defendant also submitted phone records purporting to show phone calls he made to counsel within the 30-day window for filing a motion to withdraw guilty plea. On a couple of the records, there are written markings stating "From Christopher" and "To Michelle." The records did not contain any other markings or context.

¶ 17 Defendant fails to offer any explanation as to how or why any of the above "evidence" was unknown and unavailable to him at the time he submitted his initial post conviction petition. To qualify as newly discovered evidence, the evidence must have been unavailable at trial and could not have been discovered sooner through due diligence. *People v. Morgan*, 212 Ill. 2d 148, 154 (2004). Neither the affidavits nor phone records meet this standard. In fact, the affidavits and phone records actually establish that defendant knew that his family intended to hire a private attorney and that their phone calls, along with his own calls to the public defender were allegedly going unanswered. Evidence is not newly discovered if it presents facts already known to the defendant, even if the source of those facts was unknown, unavailable or uncooperative. *People v. Jarrett*, 399 Ill. 2d 715, 723 (2010). Due to defendant's failure to establish "cause," we need not examine the "prejudice" prong.

¶ 18 Lastly, defendant cites *Martinez v. Ryan*, 132 S.Ct. 1309 (2012). Defendant argues that *Martinez* supports his request that this court consider claims that were forfeited by the ineffective assistance of initial post conviction counsel. We note that there is nothing in defendant's motion

for leave or in his successive post conviction petition that accuses initial post conviction counsel<sup>1</sup> of being ineffective for failing to raise claims regarding the public defender's alleged ineffective representation of defendant. While not dispositive, we also note that defendant did not raise any claim concerning initial post conviction counsel's representation in his previous 2009 *pro se* petition for relief from judgment. We therefore hold defendant has waived any argument under *Martinez*.

¶ 19 Even ignoring defendant's waiver, however, *Martinez* does not save defendant. The actual holding of *Martinez* is quite narrow. The Court held that "[w]here, under state law, claims of ineffective assistance of trial counsel *must be raised in an initial-review collateral proceeding*, a procedural default will not bar a *federal habeas court* from hearing a substantial claim of ineffective assistance at trial if, in the initial-review collateral proceeding, there was no counsel or counsel in that proceeding was ineffective." (Emphasis added.) *Martinez*, 132 S.Ct. at 1320. *Martinez* arose from a prosecution in Arizona, where claims of ineffective assistance of counsel may not be raised on direct appeal, so the claim must always be raised in a collateral proceeding. The *Martinez* Court used the term "initial-review collateral proceeding" to describe "collateral proceedings which provide the first occasion to raise a claim of ineffective assistance at trial." *Martinez*, 132 S.Ct. at 1315. Because Illinois does not prohibit review on direct appeal of ineffective-assistance-of-counsel claims, *Martinez* does not apply. Moreover, *Martinez* only provides for relief in a federal habeas court, not a state court.

¶ 20 For the foregoing reasons, we affirm the circuit court's judgment.

¶ 21 Affirmed.

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<sup>1</sup> Again, defendant was represented by private counsel throughout the proceedings on his initial post conviction petition.