

**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).

2014 IL App (4th) 121143-U  
NOS. 4-12-1143, 4-13-0924 cons.

**FILED**  
July 7, 2014  
Carla Bender  
4<sup>th</sup> District Appellate  
Court, IL

IN THE APPELLATE COURT  
OF ILLINOIS  
FOURTH DISTRICT

THE PEOPLE OF THE STATE OF ILLINOIS,	)	Appeal from
Plaintiff-Appellee,	)	Circuit Court of
v.	)	Macon County
SHANE S. CRUTCHFIELD,	)	No. 05CF962
Defendant-Appellant.	)	
	)	Honorable
	)	Lisa Holder White
	)	Timothy J. Steadman,
	)	Judges Presiding.

JUSTICE TURNER delivered the judgment of the court.  
Justices Harris and Steigmann concurred in the judgment.

**ORDER**

¶ 1 *Held:* The appellate court (1) found the trial court did not err in denying defendant's motion for leave to file a successive postconviction petition and (2) vacated the fines imposed by the circuit clerk and remanded for the imposition of applicable fines by the trial court.

¶ 2 In April 2006, a jury found defendant, Shane S. Crutchfield, guilty of unlawful possession of cannabis and unlawful possession of a controlled substance with intent to deliver. In June 2006, the trial court sentenced him to prison. This court affirmed his convictions and sentences. In June 2008, defendant filed a postconviction petition, which the trial court summarily dismissed. On appeal, this court reversed and remanded for second-stage proceedings. In May 2010, the State filed a motion to dismiss defendant's postconviction petition. In August 2010, the trial court granted the State's motion to dismiss. This court affirmed. In July 2012, defendant filed a *pro se* motion for leave to file a successive

postconviction petition, which the trial court denied. In September 2013, defendant filed a second motion for leave to file a successive postconviction petition, which the court also denied.

¶ 3 On appeal, defendant argues the trial court erred in denying him leave to file a successive postconviction petition. We affirm in part, vacate in part, and remand with directions.

¶ 4 I. BACKGROUND

¶ 5 In July 2005, the State charged defendant by information with unlawful possession of a controlled substance with intent to deliver with a prior unlawful-possession-of-a-controlled-substance conviction (720 ILCS 570/401(a)(2)(A), 408(a) (West 2004)), unlawful possession of a controlled substance with a prior unlawful-possession-of-a-controlled-substance conviction (720 ILCS 570/402(a)(2)(A), 408(a) (West 2004)), and unlawful possession of cannabis with a prior unlawful-possession-of-a-controlled-substance conviction (720 ILCS 550/4(d) (West 2004)). The State also charged codefendant Brandi Hefley with various unlawful-possession offenses. Defendant and codefendant pleaded not guilty.

¶ 6 In April 2006, defendant and codefendant were jointly tried before a jury. After opening statements but before the first witness, defense counsel made an oral motion *in limine*, stating, in part, as follows:

"We would make a motion *in limine* about presenting the guns as they are not relevant. They're not charged with a gun offense, and we would object to that because we believe that it's a tactic that would prejudice the jury against my clients, and it's not relevant. They're charged with drug offenses. No gun charge is presented before the jury."

¶ 7 Decatur police sergeant Randy Sikowski testified he initiated a drug investigation

at 2540 East Olive Street on April 15, 2005. While conducting surveillance, Sikowski observed defendant going in and out of the house "on a daily basis." Sikowski also saw a "high volume of traffic" going into the house, and the visitors would only stay two or three minutes before leaving.

¶ 8 Decatur police detective Christopher Copeland testified he was working as a patrol officer on July 7, 2005, when he went to a residence at 2540 East Olive Street in Decatur. There, he observed a three-foot-tall cannabis plant growing in a green bucket behind the garage. Copeland and another officer secured the residence while a search warrant was obtained.

¶ 9 Decatur police detective Richard Hughes testified he participated in the search of the residence. He testified to several items recovered in the house, including 62.5 grams of cocaine (exhibit No. 1), a bag with cocaine residue (exhibit No. 2), a man's sock that contained cocaine (exhibit No. 3), 16.5 grams of cocaine (exhibit No. 4), packaging containing cocaine (exhibit No. 5), 54.5 grams of cannabis found in a dresser drawer (exhibit No. 6), a "muscle" T-shirt that the cannabis had been wrapped in (exhibit No. 7), \$213 in United States currency found in the dresser drawer (exhibit No. 8), \$945 in United States currency found in a glass or plastic bank inside the house (exhibit No. 9), 3.9 grams of cannabis and packaging material found on a bedroom dresser (exhibit No. 10), documents taken from the residence (exhibit No. 11), a set of digital scales (exhibit No. 12), a set of sandwich bags with empty Baggies alongside them (exhibit No. 13), plastic bottles containing protein-type mixes (exhibit No. 14), 5.3 grams of cannabis and packaging material located just inside the front door on a small table (exhibit No. 15), "numerous" Baggies with cannabis residue in them found in a trash can (exhibit No. 16), as well as other items.

¶ 10 Detective Hughes testified the documents in exhibit No. 11 contained, *inter alia*,

Illinois identification cards for defendant and Hefley and numerous other items addressed to them at the Olive Street address. Hughes spoke with Hefley, and she stated she had lived at 2540 East Olive Street for approximately six months with her boyfriend, defendant.

¶ 11 At the end of the first day of trial, the trial court raised the issue of the admissibility of a gun and mentioned case law stating a gun may be relevant in a drug-dealing case. Defense counsel objected, claiming the gun was not found at the residence with the drugs. Moreover, counsel believed "the purpose of having the gun sitting there on the desk in front of the jury [was] dirtying up [his] client." The court did not make a ruling on the gun's admissibility. On the second day of trial, the State told the court the gun was recovered from a storage unit on Woodford Street. The court excluded testimony about the gun.

¶ 12 Decatur police officer Edward Root testified as an expert witness in drug distribution. He stated narcotics dealing is a "cash-and-carry business," and drugs are bought with cash as well as stolen items like stereo equipment, televisions, and guns. Drug dealers use digital scales to weigh the product and sandwich Baggies to package the drugs. Protein powders are often used as a cutting agent, *i.e.*, to dilute the cocaine but increase the amount of the product in an attempt to maximize profits. Root stated drug dealers often use multiple addresses to "hide and confuse law enforcement," as well as to protect against having their narcotics stolen. Drug dealers also place property and valuables in the names of friends or relatives to prevent seizure of the assets by law enforcement. Based on his training and experience, Root opined the drugs found in this case were intended for distribution based on the amount of cocaine, the presence of scales, and the use of sandwich Baggies.

¶ 13 Michael Cravens, a forensic scientist with the Illinois State Police, testified exhibit No. 6 contained 43.3 grams of plant material containing cannabis. Exhibit No. 1

contained 60.7 grams of a chunky, white material containing cocaine. Exhibit No. 4 measured 15.3 grams of a substance containing cocaine. Exhibit No. 22 was 150.9 grams of a white powder containing cocaine. Exhibit No. 24 was 61.7 grams of a white material containing cocaine. Exhibit No. 26 was 101 grams of a white material containing cocaine.

¶ 14 Brandi Hefley testified on her own behalf. She stated defendant had been her boyfriend and she stayed at the East Olive Street residence. She also stated several other males stayed at the residence. She neither possessed drugs at the residence nor sold any drugs at that location.

¶ 15 Defendant exercised his constitutional right not to testify. Following closing arguments, the jury found defendant guilty of unlawful possession of cannabis and unlawful possession of a controlled substance with intent to deliver. The jury also found Hefley guilty of unlawful possession of cannabis and unlawful possession of a controlled substance with intent to deliver.

¶ 16 In May 2006, defendant filed a posttrial motion, arguing, *inter alia*, the display of the gun on the evidence table in full view of the jury was prejudicial. In June 2006, the trial court denied the motion. Thereafter, the court sentenced him to 40 years in prison for unlawful possession of a controlled substance with intent to deliver with a prior unlawful-possession-of-a-controlled-substance conviction. The court also imposed a concurrent term of eight years in prison for defendant's conviction of unlawful possession of cannabis with a prior unlawful-possession-of-a-controlled-substance conviction. Defendant filed several postsentencing motions, which the court denied. Defendant appealed, and this court affirmed his convictions and sentences. *People v. Crutchfield*, No. 4-06-1078 (Jan. 23, 2008) (unpublished order under Supreme Court Rule 23).

¶ 17 In June 2008, defendant filed a *pro se* petition for postconviction relief under the Post-Conviction Hearing Act (Act) (725 ILCS 5/122-1 to 122-8 (West 2006)) and set forth multiple issues therein. In the first allegation of error, defendant claimed he was deprived of his constitutional rights to a fair trial and due process when the jury was exposed to the highly prejudicial and inadmissible gun without admonition. In his second claim, defendant alleged his trial counsel was ineffective for failing to move for a mistrial after the trial court determined the gun was inadmissible. In the third claim, defendant alleged appellate counsel was ineffective for failing to raise these two issues in his direct appeal.

¶ 18 The trial court dismissed defendant's postconviction petition, finding it frivolous and patently without merit. The court found defendant received a fair trial and his guilt was decided by a fair jury. The court also stated many of defendant's postconviction complaints were discussed on direct appeal.

¶ 19 On appeal, this court found it was arguable that counsel's failure to request a jury admonition or move for a mistrial was unreasonable. Moreover, we found it was arguable the gun on the table prejudiced defendant in the eyes of the jury and also prejudiced him when appellate counsel did not raise the issue on direct appeal. As we found defendant sufficiently stated a constitutional claim, we reversed the trial court's judgment and remanded the cause for second-stage proceedings. *People v. Crutchfield*, No. 4-08-0505 (Oct. 13, 2009) (unpublished order under Supreme Court Rule 23).

¶ 20 In February 2010, defendant filed an addendum to his postconviction petition. Among other claims, the addendum alleged trial counsel was ineffective for not requesting a mistrial or jury admonition regarding the gun that was visible to the jury. The addendum also raised the issue of appellate counsel's ineffectiveness based on the failure "to argue the

prejudicial appearance of the weapon on the evidence table near the jury for much of the trial."

¶ 21 Postconviction counsel filed a certificate pursuant to Illinois Supreme Court Rule 651(c) (eff. Dec. 1, 1984) providing he had personally consulted with defendant, had examined, copied, and read the entire trial record, and filed necessary amendments to add as an addendum to the *pro se* petition.

¶ 22 In May 2010, the State filed a motion to dismiss. The State contended the firearm issue failed on several grounds because (1) it could have been raised on direct appeal, (2) defendant could not demonstrate a cognizable violation of his constitutional rights, (3) the jury was properly instructed as to withdrawn exhibits or exhibits that were refused or stricken, and (4) the evidence at trial was overwhelming.

¶ 23 In August 2010, the trial court held a hearing on the State's motion to dismiss. In October 2010, the court issued its written ruling. The court found defendant failed to make a substantial showing of a constitutional violation as it related to the jury viewing the firearm. The court stated there was no testimony regarding the gun, it was not admitted into evidence, the jury was properly instructed as to what evidence it should consider, and the evidence against defendant was overwhelming. The court also found defendant failed to make a substantial showing of a constitutional violation as it related to trial and appellate counsels' performances. The court granted the State's motion to dismiss. On appeal, this court affirmed the dismissal of the postconviction petition without an evidentiary hearing. *People v. Crutchfield*, 2011 IL App (4th) 100815-U.

¶ 24 In July 2012, defendant filed a motion for leave to file a successive postconviction petition. Defendant alleged he had just cause and had obtained new evidence to support a postconviction claim. He stated there was just cause for his failure to bring his claim in his

previous petition because the United States Supreme Court's decision in *Lafler v. Cooper*, 132 S. Ct. 1376 (2012), upon which his claim was founded, was decided after the disposition of his first postconviction petition and the law did not support his issue prior to the *Lafler* decision.

Defendant also alleged "[p]rejudice in the form of violation of [his] right to effective assistance of counsel has resulted from [his] inability to raise the issues in [his] new petition in [his] first petition."

¶ 25 The attached postconviction petition alleged trial counsel incorrectly informed him that if he accepted the State's offer to plead guilty in exchange for a 25-year sentence, he would have to serve 85% of that sentence. Defendant claimed he learned after trial that the law requires any sentence for the crimes charged to be served at 50%. He stated he would have accepted the plea offer if he knew he would have served the 25-year sentence at 50%. Defendant claimed he brought this fact to the attention of direct-appeal counsel and postconviction counsel "but they told him that it was not sufficient grounds and that he could not prove the allegation."

¶ 26 Defendant attached to the postconviction petition a letter purportedly from attorney Garry A. Payton, wherein Payton stated the prosecutor offered defendant a 25-year deal and the sentence would have to be served at 85%. Payton stated defendant rejected the offer and went to trial.

¶ 27 In December 2012, the trial court denied defendant's motion for leave to file a successive postconviction petition. The court noted the Payton letter was not notarized and did not affirmatively indicate counsel incorrectly advised defendant regarding the percentage of any sentence he would have to serve. Moreover, the court noted that although the *Lafler* decision was recent, "there is long standing Illinois law holding the right to effective assistance of counsel extends to the decision to reject a plea offer." The court found defendant had not demonstrated

cause for his failure to bring his current claim in his original postconviction petition and had not demonstrated prejudice. From this denial, defendant filed a notice of appeal (No. 4-12-1143).

¶ 28 In September 2013, defendant filed another motion for leave to file a successive postconviction petition. The motion alleged he had cause to bring the petition where the "lack of evidence" prevented him from bringing the claim earlier. Defendant claimed the State committed a violation of *Brady v. Maryland*, 373 U.S. 83 (1963), and had a duty to disclose "the impromptu pleadings, procedural due process and circumstances encompassing his co-defendant and the reason for the negotiated plea after the finding of guilt beyond a reasonable doubt by a jury of peers." Defendant alleged prejudice in that the State rewarded codefendant with a negotiated plea "as part of pre-trial agreement in maintaining wavier of conflict wich [sic] in effect made co-defendant states [sic] witness and statement admissable [sic] as evidence against defendant at trial."

¶ 29 The trial court denied defendant's motion for leave to file a successive postconviction petition. The court found defendant failed to demonstrate cause for his failure to bring the claim in his initial postconviction petition. The court noted the "record further shows that plea agreement concerning the codefendant took place more than two months before the defendant's newly retained counsel filed a motion to reconsider sentence. The terms of the plea agreement were obviously a matter of public record." The court stated defendant failed to identify any objective factor that impeded his ability to raise the *Brady* claim in his initial postconviction petition. From this denial, defendant filed a notice of appeal (No. 4-13-0924). This court consolidated the appeals.

¶ 30

## II. ANALYSIS

¶ 31

### A. Successive Postconviction Petition

¶ 32 Defendant argues the trial court erred in denying him leave to file a successive postconviction petition, claiming he demonstrated cause and prejudice where postconviction counsel failed to adequately present his contentions of error that trial counsel gave him inaccurate advice regarding the sentencing consequences of the State's guilty-plea offer. We disagree. We note defendant makes no argument regarding his appeal in case No. 4-13-0924. Therefore, he has forfeited any challenge to the judgment in that appeal. See Ill. S. Ct. R. 341(h)(7) (eff. Feb. 6, 2013).

¶ 33 The Act "provides a remedy to criminal defendants who claim that substantial violations of their federal or state constitutional rights occurred in their original trials." *People v. Taylor*, 237 Ill. 2d 356, 371-72, 930 N.E.2d 959, 969 (2010). A proceeding under the Act is a collateral proceeding and not an appeal from the defendant's conviction and sentence. *People v. English*, 2013 IL 112890, ¶ 21, 987 N.E.2d 371. The defendant must show he suffered a substantial deprivation of his federal or state constitutional rights. *People v. Caballero*, 228 Ill. 2d 79, 83, 885 N.E.2d 1044, 1046 (2008). However, "issues raised and decided on direct appeal are barred by *res judicata*, and issues that could have been raised but were not are forfeited." *People v. Tate*, 2012 IL 112214, ¶ 8, 980 N.E.2d 1100. Moreover, "a ruling on an initial post-conviction petition has *res judicata* effect with respect to all claims that were raised or could have been raised in the initial petition." *People v. Jones*, 191 Ill. 2d 194, 198, 730 N.E.2d 26, 29 (2000).

¶ 34 The Act "generally contemplates the filing of only one postconviction petition." *People v. Ortiz*, 235 Ill. 2d 319, 328, 919 N.E.2d 941, 947 (2009). "However, the statutory bar to a successive postconviction petition will be relaxed when fundamental fairness so requires." *People v. Lee*, 207 Ill. 2d 1, 5, 796 N.E.2d 1021, 1023 (2003).

¶ 35 A successive postconviction petition may only be filed if leave of court is granted. 725 ILCS 5/122-1(f) (West 2010). "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 postconviction proceedings and prejudice results from that failure." 725 ILCS 5/122-1(f) (West 2010). "[A] successive petition 'is not considered "filed" for purposes of section 122-1(f), and further proceedings will not follow, until leave is granted, a determination dependent upon a defendant's satisfaction of the cause-and-prejudice test.'" *People v. Edwards*, 2012 IL App (1st) 091651, ¶ 19, 966 N.E.2d 417 (quoting *People v. Tidwell*, 236 Ill. 2d 150, 161, 923 N.E.2d 728, 734 (2010)). Both prongs of the cause-and-prejudice test must be satisfied for a defendant to prevail. *People v. Guerrero*, 2012 IL 112020, ¶ 15, 963 N.E.2d 909; see also *Lee*, 207 Ill. 2d at 5, 796 N.E.2d at 1023 (stating to establish fundamental fairness, "the defendant must show both cause and prejudice with respect to each claim presented").

¶ 36 "While the test for initial petitions to survive summary dismissal is that the petition state the gist of a meritorious claim—that is, a claim of arguable merit—the cause and prejudice test for successive petitions is more exacting than the gist or arguable merit standard." *People v. Miller*, 2013 IL App (1st) 111147, ¶ 26, 988 N.E.2d 1051.

"To show cause, a defendant must identify 'an objective factor that impeded his or her ability to raise a specific claim during his or her initial post-conviction proceedings.' [Citation.] To show prejudice, a defendant must demonstrate '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.' [Citation.]" *People v. Evans*, 2013 IL 113471, ¶ 10, 989 N.E.2d

1096.

¶ 37 "Where a defendant fails to first satisfy the requirements under section 122-1(f), a reviewing court does not reach the merits or consider whether his successive postconviction petition states the gist of a constitutional claim." *People v. Welch*, 392 Ill. App. 3d 948, 955, 912 N.E.2d 756, 762 (2009). As the trial court did not engage in any fact-finding here, our review is *de novo*. *People v. Green*, 2012 IL App (4th) 101034, ¶ 30, 970 N.E.2d 101.

¶ 38 In the case *sub judice*, defendant failed to establish cause for his failure to bring his claim in his initial postconviction petition. Defendant argued it was not until the Supreme Court's 2012 decision in *Lafler* that authority supported his claim that the right to effective assistance of counsel extended to the decision to reject a plea offer. We note defendant cannot establish cause based on the fact that a case on which his claim is based was not decided until after he filed his first postconviction petition. *People v. Purnell*, 356 Ill. App. 3d 524, 531, 825 N.E.2d 1234, 1240 (2005). Moreover, and as the trial court found, prior Illinois case law would have supported his claim. See *People v. Curry*, 178 Ill. 2d 509, 518, 687 N.E.2d 877, 882 (1997) (stating "it has been well established that the right to effective assistance of counsel extends to the decision to reject a plea offer, even if the defendant subsequently receives a fair trial"); *People v. Blommaert*, 237 Ill. App. 3d 811, 815-18, 604 N.E.2d 1054, 1057-59 (1992). That *Lafler* was decided in 2012, after defendant filed his first postconviction petition in 2008, did not prevent him from making the instant claim based on the supreme court's 1997 decision in *Curry* and similar cases. Thus, at the time he filed his initial petition, defendant had ample legal authority to support his claim that counsel was ineffective during plea negotiations.

¶ 39 Defendant argues he demonstrated cause where postconviction counsel failed to amend the first postconviction petition to include the claim of ineffective assistance of trial

counsel. However, defendant did not assert in his motion for leave to file a successive postconviction petition that postconviction counsel should have amended the *pro se* petition. Thus, this claim is forfeited. See *People v. Smith*, 352 Ill. App. 3d 1095, 1112, 817 N.E.2d 982, 998 (2004) (stating that an argument not made in the successive postconviction petition precluded the reviewing court from considering it on appeal from the petition's dismissal).

¶ 40 Moreover, defendant claims he established cause by postconviction counsel's failure to amend the petition to include the subject issue. However, to show cause, the defendant must identify an objective factor that impeded *his* ability to raise the claim in his initial postconviction petition. *Evans*, 2013 IL 113471, ¶ 10, 989 N.E.2d 1096. Defendant's claim that postconviction counsel failed to amend the petition to include the subject issue is not an objective factor that impeded defendant's ability to raise the issue in his *pro se* petition. See *People v. Ramey*, 393 Ill. App. 3d 661, 667-69, 913 N.E.2d 670, 676-78 (2009). Accordingly, defendant failed to satisfy the cause prong.

¶ 41 Although we have found defendant failed to establish cause, we also find defendant failed to satisfy the prejudice prong in his claim that trial counsel gave inaccurate advice that he would have to serve 85% of his 25-year term. A defendant has the burden to "submit enough in the way of documentation to allow a circuit court to" grant leave. *Tidwell*, 236 Ill. 2d at 161, 923 N.E.2d at 734-35. Here, defendant's claim of prejudice was unsupported by the letter purportedly from trial counsel that was attached to his motion. First, the letter was not notarized. See 725 ILCS 5/122-2 (West 2010) (stating a petition "shall have attached thereto affidavits, records, or other evidence supporting its allegations or shall state why the same are not attached"); *People v. Wideman*, 2013 IL App (1st) 102273, ¶¶ 15-16, 994 N.E.2d 546 (noting an affidavit that is not sworn is a nullity and does not satisfy the requirements of the Act).

¶ 42 Second, the letter does not indicate counsel incorrectly advised defendant regarding the percentage of time he would have to serve in prison. Instead, the letter notes Payton represented defendant, but it was allegedly the prosecutor who offered defendant a deal of 25 years in prison and stated he would have to serve 85% of that sentence. Thus, the letter does not establish Payton misinformed defendant regarding the application of the truth-in-sentencing statute, and defendant has not shown a violation of due process. As defendant failed to satisfy the cause-and-prejudice test, the trial court did not err in denying his motion for leave to file a successive postconviction petition.

¶ 43 B. Fines

¶ 44 In its brief, the State suggests this court should vacate certain fines imposed by the circuit clerk and remand for the imposition of mandatory fines. In its oral sentencing order on June 16, 2006, the trial court imposed a \$39,564.60 street-value fine, a \$3,000 mandatory assessment, and a \$100 laboratory fee. The June 16, 2006, docket entry reflects imposition of the same fines and fees and states defendant is to be given a \$1,710 credit against the \$3,000 drug-treatment assessment for time spent in custody. A review of the circuit clerk's online records reveals additional assessments against defendant, some of which are fines.

¶ 45 This court has held "[t]he imposition of a fine is a judicial act" and the circuit clerk, a nonjudicial member of the court, has no power to levy fines. *People v. Swank*, 344 Ill. App. 3d 738, 747-48, 800 N.E.2d 864, 871 (2003); see also *People v. Williams*, 2013 IL App (4th) 120313, ¶¶ 15-25, 991 N.E.2d 914. Thus, any fines imposed by the circuit clerk are void. *People v. Montag*, 2014 IL App (4th) 120993, ¶ 37, 5 N.E.3d 246. Accordingly, we vacate the fines imposed by the circuit clerk and remand with directions for the trial court to impose the applicable mandatory fines for the pertinent offenses.

¶ 46

### III. CONCLUSION

¶ 47 For the reasons stated, we affirm the trial court's judgment denying defendant leave to file a successive postconviction petition. We also vacate the fines imposed by the circuit clerk and remand with directions for the trial court to impose all mandatory fines. As part of our judgment, we award the State its \$50 statutory assessment against defendant as costs of this appeal.

¶ 48 Affirmed in part and vacated in part; cause remanded with directions.