

3d 123, 633 N.E.2d 123 (1994).

¶ 5 In January 1996, defendant *pro se* filed his first petition under the Post-Conviction Hearing Act (725 ILCS 5/122-1 to 122-8 (West 1996)). That same month, the trial court summarily dismissed the petition. In July 1997, this court reversed the trial court's first-stage dismissal and remanded for second-stage proceedings. *People v. Chambers*, No. 4-96-0189 (July 8, 1997) (unpublished order under Supreme Court Rule 23). In May 1998, on remand, the trial court denied defendant's petition following second-stage proceedings. This court affirmed. *People v. Chambers*, No. 4-98-0680 (Nov. 22, 1999) (unpublished order under Supreme Court Rule 23).

¶ 6 In April 2004, defendant *pro se* filed a successive postconviction petition, which the trial court dismissed that same month. This court affirmed. *People v. Chambers*, No. 4-04-0423 (Sept. 21, 2005) (unpublished order under Supreme Court Rule 23).

¶ 7 In March 2012, defendant *pro se* filed (1) a "motion for costs to provide expert witness for indigent defendant's psychiatric evaluation," (2) a "motion for appointment of forensic psychiatrist," (3) a notarized affidavit, (4) a motion for leave to file a second successive postconviction petition, (5) an appendix containing six exhibits in support of the motion for leave to file a successive postconviction petition, (6) a "motion for sentence reduction under the Illinois revestment doctrine," and (7) an appendix containing six exhibits and a memorandum of law in support of the "motion for sentence reduction under the Illinois revestment doctrine." In April 2012, defendant filed a "motion for leave to supplement motion for appointment of forensic psychiatrist."

¶ 8 All of defendant's March and April 2012 filings relate to his claim that a brain injury he suffered during a car accident in January 1990—approximately 23 months before the

murder for which he was convicted—may have affected his behavior. Defendant asserts that in August 2007, he obtained his January 1990 hospital records, which showed that he suffered a subarachnoid hemorrhage during the car accident. Among defendant's exhibits are (1) computer printouts from two medical-information websites, describing the symptoms of brain injuries; and (2) a letter from Dr. Marcos Modiano-Esquenazi to defendant, responding to an earlier letter defendant sent and confirming that—generally speaking—traumatic brain injury can cause behavioral changes. From what we can glean from his filings, it appears that defendant's core claim is that his counsel was ineffective for failing to "investigate and present mitigation evidence related to the injuries sustained in defendant's automobile accident in 1990."

¶ 9 In February 2013, the trial court entered a written order, denying defendant leave to file a second successive postconviction petition, and denying whatever other requests for relief defendant was attempting to make with his March and April 2012 filings. As to defendant's motion for leave to file a successive postconviction petition, the court found that (1) defendant failed to establish any cause for not raising his claim in his earlier postconviction petitions, (2) defendant's claim was completely devoid of specific facts describing what exactly he believed violated his constitutional rights, (3) nothing prevented defendant from obtaining the same hospital records before filing his previous postconviction petitions, (4) the connection between defendant's 1990 car accident and his behavior during the murder was purely conjecture and speculation, and (5) the letter from Dr. Modiano-Esquenazi provided no support for defendant's claim of prejudice because it (a) merely stated general facts related to brain injuries and (b) concluded by recommending that defendant consult with an expert in forensic psychiatry (which Dr. Modiano-Esquenazi stated he was not).

¶ 10 In March 2013, defendant filed a notice of appeal, and the trial court appointed

OSAD as counsel.

¶ 11 In March 2014, OSAD filed a motion to withdraw as counsel pursuant to *Pennsylvania v. Finley*, 481 U.S. 551 (1987), attaching a brief in support. On its own motion, this court granted defendant leave to file additional points and authorities in response to OSAD's motion, which he did. The State has responded. For the reasons that follow, we grant OSAD's motion to withdraw as counsel and affirm the trial court's judgment.

¶ 12 II. DEFENDANT'S APPEAL IS MERITLESS

¶ 13 Initially, we note that defendant asserts OSAD is barred from representing him due to a conflict of interest. Although defendant raises this claim in his response to OSAD's motion to withdraw, he simultaneously argues that this court should deny OSAD's motion to withdraw. Because defendant provides no factual or legal support for his assertion that OSAD is barred from representing him, we disregard his contention and address OSAD's motion on the merits.

¶ 14 OSAD asserts that defendant's appeal presents no meritorious issues. We agree.

¶ 15 A. Successive Petitions Under the Act

¶ 16 Section 122-1(f) of the Act provides 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. 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."

725 ILCS 5/122-1(f) (West 2012).

¶ 17 B. Defendant's Claims

¶ 18 Simply put, defendant argues that he is entitled to court-appointed expert witnesses to conduct forensic investigations at his direction—not just during trial—but into perpetuity, so long as defendant can think of something that might have been relevant at trial. Defendant asserts that "without such examinations and evaluations made by a forensic psychiatrist, defendant will not be able to present a meritorious claim of ineffective assistance of counsel." Notably, defendant does not purport to have a valid postconviction claim. Instead, relying upon cases involving the right to court-appointed expert witnesses at *trial*, defendant asserts that the Act entitles him to court-appointed expert witnesses for the purpose of exploring possible claims to include in a second successive postconviction petition.

¶ 19 Defendant essentially wants to proceed through the Act backwards by first conducting a full-fledged evidentiary investigation to determine whether his head injury may have affected his behavior during the murder, and, if so, then raising a claim of ineffective assistance of counsel for not conducting a similar investigation before sentencing. As to prejudice, defendant simply argues that his head injury would have provided an additional factor for the court to consider at sentencing, which might have resulted in a lower sentence. Defendant's "motion for sentence reduction under the Illinois revestment doctrine" asks for the court to hold a new sentencing hearing, with jurisdiction deriving from the revestment doctrine. See *People v. Bailey*,

2014 IL 115459, ¶ 25, 4 N.E.3d 474 ("[F]or the revestment doctrine to apply, *both* parties must: (1) actively participate in the proceedings; (2) fail to object to the untimeliness of the late filing; *and* (3) assert positions that make the proceedings inconsistent with the merits of the prior judgment and support the setting aside of at least part of that judgment." (Emphases in original.)).

¶ 20

1. *Cause*

¶ 21 Defendant alleges that his claim is based upon "newly discovered evidence" and "matters outside of the record." This "evidence," defendant contends, consists of information regarding the possible effects of his traumatic brain injury, which defendant learned in 2011 from Dr. Saleh O'Baisi, the medical director at Logan Correctional Center, and Dr. Modiano-Esquenazi. Those doctors told defendant that traumatic brain injury can sometimes affect personality and behavior. Contrary to defendant's assertion, none of this information constitutes new evidence, nor does it establish "an objective factor that impeded [defendant's] ability to raise a specific claim during his *** initial post-conviction proceedings." 725 ILCS 5/122-1(f) (West 2012).

¶ 22 Defendant's motion for leave to file a second successive postconviction petition contains the following assertion: "Sometime after the accident, defendant learned that he had experienced head trauma and did lay [*sic*] in varying states of coma over a period of five days. The extent of the head trauma was unknown to defendant, but defendant did suffer from symptoms such as memory lapses, headaches, problems with vocabulary, and varying degrees of personality changes." Prior to filing his first two postconviction petitions, defendant knew that he suffered a head injury, which resulted in psychological changes. He merely failed to investigate that issue prior to filing his previous petitions. An "objective factor" under section 122-1(f) of the Act would be something that had, until now, prevented defendant from doing what he did in

this case—specifically, obtaining information about the symptoms of brain injuries. In other words, defendant has not identified anything that prevented him from raising his claim earlier.

¶ 23

2. Prejudice

¶ 24 Defendant's prejudice argument is equally without merit. In his memorandum of law in support of his "motion for sentence reduction under the Illinois revestment doctrine," defendant states, as follows:

"The presentence investigation report contained information that in January 1990, defendant was involved in an automobile accident from which he suffered head trauma. Defense counsel failed to investigate that matter and the trial court never addressed the issue by seeking more details. Accordingly, the court did not possess the fullest amount of information about defendant from which to fashion an appropriate sentence."

Defendant contends that the missing piece of information, which may have altered the court's sentencing decision, was the fact that traumatic head injuries can sometimes cause changes in mood and behavior. This fact—likely known to any reasonably intelligent person—is the extent of defendant's prejudice argument.

¶ 25

The supreme court in *People v. Brisbon*, 164 Ill. 2d 236, 647 N.E.2d 935 (1995)—a death-penalty case—addressed and rejected a similar argument from a postconviction defendant. In *Brisbon*, the defendant argued in his postconviction petition that (1) his counsel was ineffective at sentencing for failing to investigate and present evidence that the defendant may have suffered a brain injury; (2) the trial court erred by dismissing the postconviction petition without having first granted the defendant's request for an appointed a psychological expert;

and (3) defendant's indigent status precluded him from obtaining an independent psychological examination, in violation of his constitutional rights. *Id.* at 250, 647 N.E.2d at 941. The defendant's postconviction petition included an affidavit from Dr. Charles Schoengrund, who opined that "an individual who has suffered head trauma may have organic brain damage that could affect his cognitive and affective functioning." *Id.* The supreme court addressed the defendant's claims, as follows:

"We are not persuaded by the defendant's argument that defense counsel's failure to investigate or present evidence of organic brain damage amounts to ineffective assistance of counsel. Nor do we find that a psychiatric examination was necessary to resolve whether his alleged head injuries caused organic brain damage. There is no evidence to suggest that defense counsel was aware at the sentencing hearing that the defendant may have suffered organic brain damage. The defendant never made any claim that he was mentally ill or insane at the time of the victim's murder.

* * *

We are unimpressed by the defendant's speculation that a psychological examination would have yielded significant mitigation evidence. The defendant's reliance upon Dr. Schoengrund's affidavit is misplaced, particularly when we consider that Dr. Schoengrund had never examined the defendant. A sentence will not be vacated on speculation of what a mental examination may have revealed, when the defendant failed to raise the issue of his mental condition.

[Citation.] Accordingly, we do not find that defense counsel was ineffective for failing to investigate or present evidence of organic brain damage, or that the trial court abused its discretion by denying the defendant's request for a psychological examination.

Therefore, the defendant's argument that his indigent status precluded him from obtaining a psychological examination must also fail. A psychological examination was simply not warranted under the circumstances of this case." *Id.* at 251-52, 647 N.E.2d at 941-42.

¶ 26 We find no meaningful distinction between the rejected claims in *Brisbon* and defendant's claims in this case. Although defendant in this case alleges that counsel knew of his head injury at the time of sentencing, defendant gave counsel no reason to believe that the injury caused brain damage which may have been relevant to the murder. Defendant's speculation about what a psychiatric evaluation might reveal now, more than 20 years after the murder, does not establish that his counsel's failure to request a psychiatric evaluation prior to sentencing "so infected the trial that the resulting conviction or sentence violated due process." 725 ILCS 5/122-1(f) (West 2012).

¶ 27 Defendant has established neither cause nor prejudice under section 122-1(f) of the Act. Accordingly, we agree with OSAD that it would be frivolous to argue the trial court erred by denying defendant leave to file a second successive postconviction petition. Because defendant's other filings related to his claim regarding his head injury, the court properly dismissed those filings as well.

¶ 28

III. CONCLUSION

¶ 29 For the reasons stated, we grant OSAD's motion to withdraw as counsel and affirm the trial court's denial of defendant's motion for leave to file a second successive postconviction petition. As part of our judgment, we award the State its \$50 statutory assessment against defendant as costs of this appeal.

¶ 30 Affirmed.