

2016 IL App (2d) 141284-U
No. 2-14-1284
Order filed December 21, 2016

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IN THE
APPELLATE COURT OF ILLINOIS
SECOND DISTRICT

THE PEOPLE OF THE)	Appeal from the Circuit Court
STATE OF ILLINOIS,)	of Lake County.
)	
Plaintiff-Appellee,)	
)	
v.)	No. 92-CF-228
)	
JAMES TOWNSEND,)	Honorable
)	Victoria A. Rossetti,
Defendant-Appellant.)	Judge, Presiding.

JUSTICE BIRKETT delivered the judgment of the court.
Justices Burke and Spence concurred in the judgment.

ORDER

¶ 1 *Held:* The trial court erred in denying defendant leave to file a successive postconviction petition because defendant had satisfied the cause-and-prejudice test.

¶ 2 Defendant, James Townsend, a.k.a Ronell Reynolds, appeals from the judgment of the circuit court of Lake County denying him leave to file a successive postconviction petition. Defendant argues that he was 17 years of age at the time of the underlying offense and that he received a *de facto* life sentence in contravention of *People v. Reyes*, 2016 IL 119271, thereby satisfying the cause and prejudice test applicable to successive postconviction petitions. We agree and reverse and remand.

¶ 3

I. BACKGROUND

¶ 4 Defendant was convicted of the 1992 first degree murder of Parnell James (Ill. Rev. Stat. 1991, ch. 38, par. 9-1(a)(2) (now codified at 720 ILCS 5/9-1(a)(2) (West 2014))) and the attempted first degree murder of James Moses (Ill. Rev. Stat. 1991, ch. 38, par. 8-4(a) (now codified at 720 ILCS 5/8-4(a) (West 2014))). Defendant received consecutive sentences for the offenses: a 55-year term of imprisonment for murder and a 30-year term of imprisonment for attempted murder.

¶ 5 Throughout the proceedings, defendant was referred to as both James Townsend and Ronell Reynolds. For example, defendant's arrest warrant referred to him as "James Townsend-Ronell Reynolds." Many of the witnesses in the trial referred to defendant as "Ronell Reynolds." In the sentencing hearing, the State chose to refer to defendant as "Ronell Reynolds" as it presented argument for defendant's sentence. Defendant's presentence investigation report determined his name to be "Ronell Lee Reynolds," with "James Townsend" as one of defendant's aliases. On the other hand, at his arraignment, defendant informed the trial court that his name was "James Townsend."

¶ 6 In similar fashion, defendant's birth date is listed throughout the record as January 17, 1973; January 16, 1974; January 18, 1973; February 16, 1974; and January 16, 1975. The presentence investigation report settled on a birth date of January 16, 1974, but noted that defendant reported a birth date of January 16, 1975. A Cook County Juvenile Court social report listed defendant's (as "Ronell Reynolds") birth date as January 16, 1975. At his August 5, 1992, arraignment, defendant informed the trial court that he was 17 years of age. The trial court determined that defendant was 20 years of age in the sentencing order, which would mean it accepted one of the 1973 birth dates.

¶ 7 Turning to the proceedings below, the record shows that, on January 25, 1992, defendant, along with Pierre Cousar, shot Parnell and Moses as they were walking along Lenox Street in Waukegan. Apparently, defendant, Cousar, the victims, and a third companion to the two victims, James Debbs, exchanged words or threats, whereupon the victims were shot by defendant and Cousar. Cousar had been selling drugs on the corner where the shooting occurred; the victims were members of a rival gang.

¶ 8 The matter advanced to a jury trial. The jury found defendant guilty of murder and attempted murder. Defendant's posttrial motion was denied, and the matter proceeded to sentencing. In sentencing defendant, the trial court determined that defendant was extremely dangerous so, in order to protect society from him, consecutive sentences were warranted. The trial court did not discuss mitigating factors including defendant's youth, immaturity, and potential for rehabilitation; the only mitigating factor it considered was the effect defendant's incarceration would have on his dependents. Defendant's motion to reconsider sentence was denied, and defendant appealed.

¶ 9 In his direct appeal, defendant argued that prosecutorial misconduct, evidentiary errors, and ineffective assistance of trial counsel prejudiced him, requiring reversal of his convictions and a new trial. This court rejected defendant's contentions and affirmed his convictions. *People v. Townsend*, No. 2-93-0563 (March 22, 1995).

¶ 10 Thereafter, on December 26, 2000, defendant filed a *pro se* postconviction petition pursuant to the Post-Conviction Hearing Act (Act) (725 ILCS 5/122-1 *et seq.* (West 2014)), raising a number of contentions. On January 19, 2001, the trial court summarily dismissed defendant's petition. This court affirmed. *People v. Townsend*, 333 Ill. App. 3d 375 (2002).

¶ 11 On March 16, 2007, defendant sought leave to file a successive postconviction petition

pursuant to section 122-1(f) of the Act (725 ILCS 5/122-1(f) (West 2014)), arguing actual innocence. On May 9, 2007, the trial court summarily dismissed the successive petition, holding that defendant failed to satisfy the cause-and-prejudice test. This court affirmed the trial court's judgment. *People v. Townsend*, No. 2-07-0555 (May 6, 2009).

¶ 12 On August 20, 2014, defendant sought leave to file a second successive postconviction petition pursuant to section 122-1(f) of the Act. Defendant alleged that, at the time of the offenses, he was a juvenile, being 17 years of age. Defendant argued that his sentences should be vacated because they amounted to a *de facto* life sentence, which violated the requirements of *Miller v. Alabama*, 132 S. Ct. 2455 (2012) and its progeny. Defendant attached to his second successive petition a copy of the transcript of the trial court's remarks at sentencing; a copy of a birth certificate for Ronell Lee Reynolds, indicating a birth date of January 16, 1975, and the identity of the mother as Delores Ford and the father as Elijah Reynolds; a high school equivalency certificate for James Townsend; and a certificate of completion for 12 "lifestyle redirection" modules for James Townsend.

¶ 13 On October 15, 2014, the trial court denied defendant's petition, once again holding that defendant did not satisfy the cause-and-prejudice test. The trial court held:

“7. Successive Post-Conviction Petitions are allowed to be filed only with leave of court. Leave of court may be granted only if petitioner satisfies the cause and prejudice test. And a petitioner must demonstrate both cause and prejudice with respect to each claim raised. *People v. Pitsonbarger*, 205 Ill. 2d 444 (2002).

8. Pursuant to the cause and prejudice test, the petitioner must show good cause for failing to raise the claimed errors in a prior proceeding and actual prejudice resulting from the claimed errors. 'Cause' is defined as any objective factor, external to the

defense, which impeded the petitioner's ability to raise a specific claim at the initial Post-Conviction proceeding. *Pitsonbarger*, 205 Ill. 2d at 462. 'Prejudice' is defined as an error so infections [sic] to the proceeding that the resulting conviction violates due process. *Pitsonbarger*, 205 Ill. 2d at 464.

9. Petitioner's reliance on *Miller v. Alabama*, 132 S. Ct. 2455[,] and *People v. Davis*, [2014 IL 115595], is misplaced. Petitioner's birthday is January 17, 1973, and the date of the offense was January 25, 1992, making Petitioner eighteen (18) [sic] years old at the time of the offense.

10. Petitioner was not sentenced to life in prison without parole nor was the charge of First Degree Murder Petitioner was convicted of a mandatory life sentence without parole. Petitioner's sentence, after a sentencing hearing, was fifty-five (55) years on the First Degree Murder count and thirty (30) years consecutive, on the Attempt First Degree Murder count.

11. Petitioner's allegations do not meet the required cause-and-prejudice test."

The trial court thus denied petitioner leave to file his second successive postconviction petition.

¶ 14 Petitioner filed a timely motion for rehearing, asserting that his "true name" was Ronell Reynolds, while "James Townsend" was an alias he used to conceal his identity. Petitioner averred that his birth date was January 16, 1975, making him 17 years of age at the time of the offenses. Defendant again attached a copy of the birth certificate for Ronell Lee Reynolds. On November 19, 2014, the trial court denied defendant's motion to reconsider. The trial court noted that, in addition to the reasons stated in its October 15, 2014, order, petitioner had signed the motion for leave, the second successive postconviction petition, and the motion for rehearing as "James Townsend," and not "Ronell Reynolds." Defendant timely appeals.

¶ 15

II. ANALYSIS

¶ 16 On appeal, defendant argues that the trial court erred in denying his request for leave to file a successive postconviction petition. Defendant contends that he has satisfied the cause-and-prejudice test, so he should have been allowed to file his successive petition.

¶ 17 The Act describes a method for a criminal defendant to assert that he or she experienced a substantial denial of constitutional rights in the proceedings which resulted in his or her conviction via a collateral attack on the judgment of conviction. *People v. Smith*, 2014 IL 115946, ¶ 22. Section 122-1(f) of the Act provides a mechanism for successive postconviction petitions, requiring the defendant to satisfy the cause-and-prejudice test enunciated *Pitsonbarger*, 205 Ill. 2d 444. 725 ILCS 5/122-1(f) (West 2014); *Smith*, 2014 IL 115946, ¶ 24.

¶ 18 When seeking leave to file a successive postconviction petition, a defendant must first obtain leave of court, and this must be done before any further proceedings on his claims can follow. *Id.* ¶ 30. In addition to the burden of obtaining leave of court, the defendant must also submit sufficient documentation to allow the trial court to make the determination whether he or she has satisfied the relevant test: cause and prejudice or actual innocence. *Id.*

¶ 19 To demonstrate cause, the defendant must identify an objective factor that impeded his or her ability to raise a specific claim during the initial postconviction proceedings; to demonstrate prejudice, the defendant must demonstrate that the claim not raised during the initial postconviction proceedings so infected the trial that the resulting conviction violated due process. *Id.* ¶ 33 (quoting 725 ILCS 5/122-1(f) (West 2008)). The cause-and-prejudice test for a successive postconviction petition presents a more exacting standard than the first-stage frivolous-or-patently-without-merit standard for the initial postconviction petition. *Id.* ¶ 35. In accord with this standard, a trial court should deny leave to file a successive postconviction

petition when it is clear, from reviewing the successive petition and the attached documentation, that the claims alleged by the defendant fail as a matter of law or where the successive petition with its supporting documentation is insufficient to justify further proceedings. *Id.* We review *de novo* the trial court's denial of leave to file a successive postconviction petition. *People v. Love*, 2013 IL App (2d) 120600, ¶ 27.

¶ 20 Defendant contends that he demonstrated cause to file a successive postconviction petition by showing that, at age 17, he committed the offenses that led to a *de facto* life sentence, violating the principle in *Miller* and its progeny prohibiting the mandatory and *de facto* sentencing of a juvenile to a term of life imprisonment without parole. We note that our supreme court recently held that a term of imprisonment that is so long as to constitute a *de facto* life sentence is impermissible. *Reyes*, 2016 IL 119271, ¶ 9. Instead, a trial court must consider the mitigating factors of the juvenile defendant's youth, immaturity, and potential for rehabilitation. *Id.*

¶ 21 Defendant contends that he demonstrated prejudice by the violation of his eighth amendment rights as announced in *Reyes* when he was sentenced to an 85-year aggregate term of imprisonment for his offenses. Defendant concludes that, because he demonstrated cause and prejudice pursuant to section 122-1(f) of the Act, the trial court should have granted him leave to file his second successive postconviction petition.

¶ 22 The State counters, contending that the record shows that defendant was 19 years of age at the time of the offenses. We do not accept this contention.

¶ 23 The record shows that defendant may have been named Ronell Lee Reynolds, with "James Townsend" one of the aliases he used to conceal his actual identity. Defendant also attached a birth certificate for Ronell Lee Reynolds showing a January 16, 1975, birth date. The

parents identified on the Ronell Lee Reynolds birth certificate were those identified in defendant's presentence investigation report. Thus, we believe that defendant has sufficiently demonstrated that his identity may be Ronell Lee Reynolds, and, if so, he was 17 years of age at the time of the commission of the offenses.

¶ 24 The State argues that the documentation was insufficient to prove that defendant is Ronell Lee Reynolds, because he did not include an affidavit from his mother or father to corroborate the claim that he is, in fact, Ronell Lee Reynolds, and he did not explain why such further evidence was not included. We acknowledge the State's point, but we believe that, for our purposes, defendant has sufficiently demonstrated, by referring to the record and the presentence investigation report, that his name may actually be "Ronell Lee Reynolds." The inclusion of the birth certificate shows that the individual identified as Ronell Lee Reynolds has a January 16, 1975, birth date, and this would make defendant 17 years of age at the time of the offenses.

¶ 25 Additionally, *Reyes* unequivocally states that a *de facto* life sentence imposed upon a minor violates the eighth amendment and constitutes cruel and unusual punishment, particularly where the trial court has not considered the mitigating factors associated with youth: the juvenile's age and its attendant characteristics, immaturity, and rehabilitative potential. *Reyes*, 2016 IL 119271, ¶ 9. *Reyes* defines an unsurvivable term of years as the functional equivalent of a life sentence without the possibility of parole. *Id.* It is true that, in *Reyes*, the defendant received both mandatory minimum sentences and mandatorily consecutive sentences, neither of which circumstances are present here. *Id.* ¶ 10. *Reyes* emphasized that juveniles are different and courts must recognize this difference by considering the unique mitigating factors of childhood, such as age and its attendant characteristics, family and home environment, and the

circumstances of the case in light of the juvenile's personal characteristics. *Id.* ¶ 3. We further fail to discern a difference between a sentence imposed as the result of a mandatory scheme depriving the trial court of discretion in sentencing a juvenile and a sentence based on the erroneous belief that the defendant is not a juvenile, again depriving the court of the particular exercise of discretion *Reyes* requires.

¶ 26 Here, the trial court believed that defendant was not a juvenile. Moreover, the trial court did not consider any of the mitigating characteristics identified in *Reyes*, only that defendant's dependents would experience some hardship. Thus, while the length of the sentence was due to the trial court's discretion, that discretion was really no discretion under *Reyes*, because the trial court did not consider that defendant was a juvenile. Based on this, we conclude defendant has made the requisite showing of prejudice.

¶ 27 The State contends that consecutive sentences cannot be aggregated for the purpose of determining whether the defendant's sentence is excessive. See *People v. Carney*, 196 Ill. 2d 518, 529 (2001) (consecutive sentences constitute separate sentences for each crime of which a defendant has been convicted). However, determining whether a sentence is excessive is different than determining whether a defendant has received a *de facto* life sentence. Moreover, *Reyes* determined that an aggregate 97-year sentence (a 45-year sentence consecutive to a 26-year sentence consecutive to a second 26-year sentence) constituted a *de facto* life sentence. *Reyes*, 2016 IL 119271, ¶ 2. Plainly, then, for purposes of our analysis, we may aggregate defendant's consecutive sentences to determine whether they constitute a *de facto* life sentence.

¶ 28 We therefore hold that defendant has demonstrated the existence of cause and prejudice, thereby satisfying the threshold requirement for being allowed to file a successive postconviction petition. Thus, the trial court erred in denying defendant leave to file his second successive

postconviction petition. Accordingly, we reverse the trial court's judgment and remand the cause for further proceedings consistent with this order. We note that our determination is limited to whether defendant satisfied the cause-and-prejudice test. On remand, the trial court remains free to make any appropriate determination, based on further proceedings, including whether defendant is, in fact, Ronell Lee Reynolds, whether defendant's birth date is January 16, 1975, and whether defendant's sentence actually amounts to an unconstitutional *de facto* life sentence under *Miller* and its progeny.

¶ 29

III. CONCLUSION

¶ 30 For the foregoing reasons, the judgment of the circuit court of Lake County is reversed and the cause is remanded.

¶ 31 Reversed and remanded.