

## 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).

2016 IL App (4th) 140752-U

NO. 4-14-0752

IN THE APPELLATE COURT

OF ILLINOIS

FOURTH DISTRICT

THE PEOPLE OF THE STATE OF ILLINOIS,	)	Appeal from
Plaintiff-Appellee,	)	Circuit Court of
v.	)	Adams County
RICHARD L. HOOD,	)	No. 91-CF-387
Defendant-Appellant.	)	
	)	Honorable
	)	John C. Wooleyhan,
	)	Judge Presiding.

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JUSTICE STEIGMANN delivered the judgment of the court.  
Presiding Justice Knecht and Justice Pope concurred in the judgment.

## ORDER

¶ 1 *Held:* The holding of *People v. Castleberry*, 2015 IL 116916, which abolished the void-sentence rule, applied retroactively to defendant's argument in his motion for leave to file a successive postconviction petition. Therefore, defendant could not attack his underlying sentence as void. The appellate court accordingly affirmed the trial court's dismissal of defendant's motion for leave to file a successive petition.

¶ 2 In December 1991, a jury found defendant, Richard L. Hood, guilty of battery, aggravated battery, and unlawful restraint. The trial court later sentenced defendant to extended-term sentences of 10 and 6 years in prison for aggravated battery and unlawful restraint, respectively. Defendant filed a postconviction petition in November 1994, which the court denied. In April 2014, defendant moved for leave to file a successive petition, which the court also denied. Defendant appeals, arguing that his extended-term sentence for unlawful restraint is void. We conclude that his sentence is not void and therefore affirm the trial court's judgment.

¶ 3

## I. BACKGROUND

¶ 4 In December 1991, a jury found defendant guilty of battery (Ill. Rev. Stat. 1991, ch. 38, ¶ 12-3(a)(1)), aggravated battery (Ill. Rev. Stat. 1991, ch. 38, ¶ 12-4(b)(8)), and unlawful restraint (Ill. Rev. Stat. 1991, ch. 38, ¶ 10-3(a)). The trial court sentenced defendant to extended-term sentences of 10 years in prison for aggravated battery and 6 years for unlawful restraint, along with 364 days for battery. This court affirmed on direct appeal. *People v. Hood*, 4-92-0097 (Aug. 14, 1992) (unpublished order under Supreme Court Rule 23).

¶ 5 In November 1994, defendant filed a petition for postconviction relief pursuant to the Post-Conviction Hearing Act (725 ILCS 5/122-1 to 122-8 (West 1994)). The trial court summarily dismissed the petition, and we affirmed on direct appeal. *People v. Hood*, No. 4-95-0084 (May 16, 1996) (unpublished order pursuant to Supreme Court Rule 23).

¶ 6 In April 2014, defendant filed a motion for leave to file a successive postconviction petition, arguing that his extended-term sentence for unlawful restraint was unauthorized by statute and therefore void. The trial court denied the motion.

¶ 7 This appeal followed.

## ¶ 8 II. ANALYSIS

¶ 9 Defendant argues that we should vacate his extended-term sentence as void because it was unauthorized by statute. The State argues that the supreme court abolished the void-sentence rule in *People v. Castleberry*, 2015 IL 116916, 43 N.E.3d 932, precluding defendant from utilizing that rule in this appeal. Defendant responds that *Castleberry* was decided after his sentence became final and that the decision does not apply retroactively to these collateral proceedings.

¶ 10 First, we agree with the trial court that defendant's motion for leave to file a successive postconviction petition established neither cause nor prejudice. See 725 ILCS 5/122-1(f)

(West 2014) (Leave to file a successive petition "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."). In particular, we agree with the trial court's summation that defendant made no effort to show cause why he did not raise his claims in his initial postconviction petition. We therefore agree with the court's decision to deny the motion.

¶ 11 In addition, defendant cannot bypass the cause requirement under the void-sentence rule. The supreme court recently abolished the void-sentence rule in *People v. Castleberry*, 2015 IL 116916, 43 N.E.3d 932. This court has held that the holding of *Castleberry* applies "retroactively" to cases like defendant's, when a party files a collateral attack on a sentence that was finalized prior to the issuance of *Castleberry*. See *People v. Stafford*, 2016 IL App (4th) 140309 (*Castleberry* did not establish a "new rule" and therefore its holding applies retroactively); *People v. Morrison*, 2016 IL App (4th) 140712 (citing *Stafford* favorably); *People v. Cashaw*, 2016 IL App (4th) 140759 (a collateral petitioner cannot avail himself of the retroactivity rules of *Teague v. Lane*, 489 U.S. 288 (1989), to prevent retroactive application of *Castleberry*). *Castleberry* therefore applies to this appeal.

¶ 12 As a result, defendant cannot claim that his sentence is void. Instead, to succeed on appeal, defendant must establish cause for failing to raise his claim in his initial postconviction petition. 725 ILCS 5/122-1(f) (West 2014). Defendant has not attempted to do so. We therefore affirm the trial court's denial of defendant's motion for leave to file a successive postconviction petition.

¶ 13 III. CONCLUSION

¶ 14 For the foregoing reasons, we affirm the trial court's judgment.

¶ 15 As part of our judgment, we award the State its \$50 statutory assessment against

defendant as costs of this appeal. 55 ILCS 5/4-2002 (West 2014).

¶ 16 Affirmed.