

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).

FILED

October 25, 2016
Carla Bender
4th District Appellate
Court, IL

2016 IL App (4th) 140798-U
NOS. 4-14-0798, 4-14-1033 cons.

IN THE APPELLATE COURT
OF ILLINOIS
FOURTH DISTRICT

THE PEOPLE OF THE STATE OF ILLINOIS,)	Appeal from
Plaintiff-Appellee,)	Circuit Court of
v.)	Champaign County
CHARLES A. WATSON,)	No. 10CF1955
Defendant-Appellant.)	
)	Honorable
)	Harry E. Clem,
)	Judge Presiding.

PRESIDING JUSTICE KNECHT delivered the judgment of the court.
Justices Holder White and Pope concurred in the judgment.

ORDER

¶ 1 *Held:* We grant the office of the State Appellate Defender’s motion to withdraw as appellate counsel in the cases consolidated herein and affirm.

¶ 2 This appeal comes to us on a motion from the office of the State Appellate Defender (OSAD) to withdraw as appellate counsel for defendant, Charles A. Watson, on the ground any request for review in the cases consolidated herein would be wholly frivolous and without merit. We grant OSAD’s motion and affirm.

¶ 3 I. BACKGROUND

¶ 4 Following a March 2011 trial, a jury found defendant guilty of aggravated robbery (720 ILCS 5/18-5(a) (West 2010)). In April 2011, the trial court sentenced defendant to 15 years’ imprisonment. Defendant’s conviction and sentence were later affirmed on appeal and survived a collateral attack. See *People v. Watson*, 2012 IL App (4th) 110424-U (affirming on

direct review); *People v. Watson*, 2013 IL App (4th) 120332-U (affirming the trial court's denial of defendant's postconviction petition following an evidentiary hearing).

¶ 5 In June 2014, defendant filed a petition for relief from judgment under section 2-1401 of the Code of Civil Procedure (Civil Code) (735 ILCS 5/2-1401 (West 2012)), alleging he was deprived of due process and a fair trial when the trial court tendered a version of Illinois Pattern Jury Instruction, Criminal, No. 3.15 (4th ed. 2000) (IPI Criminal 4th No. 3.15) previously held to be defective in *People v. Herron*, 215 Ill. 2d 167, 190, 830 N.E.2d 467, 482 (2005). The State moved to dismiss defendant's section 2-1401 petition, arguing the petition (1) was untimely, (2) failed to demonstrate defendant acted diligently in pursuing his claim, and (3) failed to allege a claim for which relief could be granted. In August 2014, the trial court granted the State's motion to dismiss defendant's section 2-1401 petition. Defendant appealed, and OSAD was appointed to represent defendant on appeal. The matter was docketed as case No. 4-14-0798.

¶ 6 While his appeal was pending, defendant filed an amended motion for leave to file a successive postconviction petition. Defendant alleged the cause for his failure to bring his claims in his initial postconviction petition was because he "discover[ed] new evidence as he was viewing through his transcripts." If granted leave, defendant intended to raise the following claims: (1) a State pretrial motion for a continuance made "him past his 120 days," (2) video evidence shown at his trial was altered, (3) his trial counsel committed perjury and violated the attorney-client privilege during the evidentiary hearing on his original postconviction petition, (4) multiple witnesses committed perjury while testifying during his trial, and (5) the State violated discovery rules by failing to disclose an exculpatory video. In November 2014, the trial court denied defendant's amended motion for leave to file a successive postconviction petition.

Defendant appealed, and OSAD was appointed to represent defendant on appeal. The matter was docketed as case No. 4-14-1033.

¶ 7 In April 2016, OSAD moved to consolidate the cases, which we granted, and filed a motion for leave to withdraw as appellate counsel. OSAD asserted it had reviewed the record and concluded any request for review would be wholly frivolous and without merit. OSAD provided defendant with a copy of the motion. On our own motion, we granted defendant leave to file additional points and authorities, which he did. The State filed a responding brief, and defendant filed a reply to the State's brief.

¶ 8 II. ANALYSIS

¶ 9 A. No. 4-14-0798

¶ 10 OSAD contends any argument suggesting the trial court erred in dismissing defendant's section 2-1401 petition would be wholly frivolous and without merit. OSAD concedes the jury received a version of IPI Criminal 4th No. 3.15 previously held to be defective by our supreme court. See *Herron*, 215 Ill. 2d at 190-91, 830 N.E.2d at 482 (finding the instruction's use of the conjunction "or" to be misleading and ambiguous). OSAD maintains, however, dismissal was proper as (1) the petition was untimely, and defendant failed to allege any basis sufficient to excuse the late filing; (2) defendant's claim was barred by *res judicata* as defendant could have raised the error on direct appeal or in his initial postconviction petition; and (3) the error did not amount to plain error to warrant reversal as the evidence of guilt was overwhelming.

¶ 11 Section 2-1401 of the Civil Code (735 ILCS 5/2-1401 (West 2012)) provides a statutory procedure permitting relief from final judgments after 30 days from their entry based on errors of fact occurring in the prosecution of a cause, unknown to the petitioner and trial court at

the time of trial, which, if then known, would have prevented the judgment. *People v. Coleman*, 206 Ill. 2d 261, 288, 794 N.E.2d 275, 292 (2002). A section 2-1401 petition may not be considered where it is filed beyond two years after the judgment was entered, unless the petitioner makes a clear showing he was under a legal disability or duress or the grounds of relief were concealed. *People v. Caballero*, 179 Ill. 2d 205, 210-11, 688 N.E.2d 658, 660-61 (1997).

¶ 12 Defendant's section 2-1401 petition was filed three years after the judgment of conviction was entered and sentence imposed. Defendant suggests his untimely filing of his petition should be excused because he was unaware of the law. "Ignorance of the law or legal rights will not excuse a delay in filing a lawsuit." *People v. Lander*, 215 Ill. 2d 577, 588, 831 N.E.2d 596, 603 (2005). Defendant's suggestion he only recently discovered case law in support of his position provides no excuse for his late filing. Defendant further suggests his untimely filing of his petition should be excused as his conviction is void due to the jury-instruction error. A judgment is void only where the court lacks jurisdiction to enter the judgment. *People v. Castleberry*, 2015 IL 116916, ¶ 15, 43 N.E.3d 932; *People v. Warren*, 2016 IL App (4th) 120721-B, ¶ 82, 55 N.E.3d 117. A jury-instruction error does not render a defendant's conviction void. Defendant failed to file a timely section 2-1401 petition or demonstrate his late filing should be excused. Any argument suggesting the trial court erred in denying defendant's section 2-1401 petition would be wholly frivolous and without merit.

¶ 13 B. No. 4-14-1033

¶ 14 OSAD contends any argument suggesting the trial court erred in denying defendant's amended motion for leave to file a successive postconviction petition would be wholly frivolous and without merit. OSAD asserts the court's denial was proper as (1) defendant failed to identify any objective factor that impeded his ability to raise his claims in his initial

postconviction petition, and (2) defendant's claims would be meritless.

¶ 15 The Post-Conviction Hearing Act (725 ILCS 5/122-1 to 122-7 (West 2014)) contemplates the filing of only one petition without leave of court (725 ILCS 5/122-1(f) (West 2014)), and any claim not raised in the initial petition is deemed forfeited (725 ILCS 5/122-3 (West 2014)). *People v. Guerrero*, 2012 IL 112020, ¶ 15, 963 N.E.2d 909. Successive postconviction petitions are disfavored by Illinois courts. *People v. Smith*, 2014 IL 115946, ¶ 31, 21 N.E.3d 1172. “A defendant faces ‘immense procedural default hurdles when bringing a successive post[conviction] petition,’ which ‘are lowered in very limited circumstances’ as successive petitions plague the finality of criminal litigation.” *People v. Crenshaw*, 2015 IL App (4th) 131035, ¶ 27, 38 N.E.3d 1256 (quoting *People v. Tenner*, 206 Ill. 2d 381, 392, 794 N.E.2d 238, 245 (2002)).

¶ 16 The statutory bar against successive postconviction petitions may be relaxed where a defendant demonstrates both cause for his or her failure to bring a claim in an initial postconviction petition and prejudice resulting from that failure. *People v. Edwards*, 2012 IL 111711, ¶¶ 22-23, 969 N.E.2d 829; 725 ILCS 5/122-1(f) (West 2014) (codifying the cause-and-prejudice test). To establish cause, a defendant must demonstrate an objective factor, external to the defense, impeded his or her ability to raise a claim during initial postconviction proceedings. *People v. Evans*, 2013 IL 113471, ¶ 10, 989 N.E.2d 1096; 725 ILCS 5/122-1(f)(1) (West 2014). Defendant alleged in his amended motion the cause for his failure to bring his claims in his initial postconviction petition was because he “discover[ed] new evidence as he was viewing through his transcripts.” The mere fact defendant or his counsel failed to recognize the factual or legal basis for a claim does not constitute cause. See *Guerrero*, 2012 IL 112020, ¶ 19, 963 N.E.2d 909. A defendant who elects to file a *pro se* postconviction petition is responsible for the

results of his actions, and such actions cannot serve as cause to allow a successive petition to move forward. See *Evans*, 2013 IL 113471, ¶ 13, 989 N.E.2d 1096 (defendant's subjective ignorance of the law is not an objective factor that impeded his ability to raise his claims in his initial postconviction petition). On this ground alone, any argument suggesting the trial court erred in denying defendant's amended motion for leave to file a successive postconviction petition would be wholly frivolous and without merit.

¶ 17

III. CONCLUSION

¶ 18 We grant OSAD's motion to withdraw as counsel and affirm. As part of our judgment, we grant the State its statutory assessment of \$50 against defendant as costs of this appeal. 55 ILCS 5/4-2002(a) (West 2014).

¶ 19 Affirmed.