

No. 1-14-0409

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).

PEOPLE OF THE STATE OF ILLINOIS,)	Appeal from the
)	Circuit Court of
Plaintiff-Appellee,)	Cook County
)	
v.)	No. 01 CR 19575
)	
SANTANA MCCREE,)	The Honorable
)	Matthew E. Coghlan,
Petitioner-Appellant.)	Judge Presiding.

JUSTICE PIERCE delivered the judgment of the court.
Presiding Justice Hyman and Justice Neville concurred in the judgment.

ORDER

- ¶ 1 *Held:* Petitioner forfeited his appellate arguments by raising ineffective assistance of trial counsel claims that were not raised in his postconviction petition.
- ¶ 2 Santana McCree filed a *pro se* postconviction petition pursuant to the Post-Conviction Hearing Act (Act) (725 ILCS 5/122-1 *et seq.* (West 2012)). The circuit court dismissed the petition at the first stage as patently frivolous and without merit. On appeal, McCree argues that his trial counsel was ineffective for (1) failing to investigate McCree’s mental health and to present McCree’s limited education as support for a motion to suppress his statements on the basis of voluntariness where he may not have been capable of withstanding prolonged interrogation, and (2) failing to use McCree’s limited education as support for a motion to suppress his custodial statements on the basis that his waiver of his *Miranda* rights was not

voluntarily made. McCree raises these arguments for the first time on appeal, and we therefore cannot consider them. Furthermore, he raises no argument with respect to any claim set forth in his postconviction petition. For the following reasons, we affirm the judgment of the circuit court.

¶ 3

BACKGROUND

¶ 4 Santana McCree was arrested on July 11, 2011, and charged with first degree murder and concealment of the homicidal death of Denise Williamson. Prior to trial, McCree filed a motion to quash arrest and suppress evidence based on his assertion that his arrest was illegal. The circuit court denied the motion. McCree also filed a motion to suppress his custodial statements, alleging that he was not informed of his *Miranda* rights and that his custodial statements were the product of physical and psychological coercion. The circuit court conducted a hearing. Officers and detectives testified that McCree was not physically abused during his arrest or after being taken into custody, that his handcuffs were removed while he was in an interrogation room, and that his shoes were taken away because they had blood on them and that he was given paper booties while officers retrieved shoes from his home. The circuit court heard testimony that defendant was repeatedly given his *Miranda* warnings, that he was detained and questioned over the course of approximately 27 hours, and that he initially denied any involvement in the murder, but subsequently admitted that he killed Williamson and that he and another woman concealed Williamson's body. McCree testified that he was kicked during his arrest, that his shoes were taken from him and not returned, that he was punched while at the police station and handcuffed to a wall in a room with no window or clock, that he was not fed until he gave a videotaped confession, and that officers and detectives threatened to take away his children. After the hearing, the circuit court denied the motion to suppress.

¶ 5 The case proceeded to a bench trial, after which McCree was found guilty of first degree murder and of concealment of a homicidal death. He was sentenced to a total of 45 years' imprisonment. On direct appeal, McCree argued that the circuit court erred by denying his motion to suppress his custodial statements as involuntary, and that his trial counsel was ineffective for failing to object to the admission of McCree's custodial statements at trial. *People v. McCree*, 366 Ill. App. 3d 290, 295 (2006). We found no error, and affirmed the circuit court's judgment. *Id.* at 298.

¶ 6 On June 13, 2013, McCree filed a 52-page *pro se* postconviction petition pursuant to section 122-1 of the Act (725 ILCS 5/122-1 (West 2012)). He asserted that (1) his appellate counsel on direct appeal was ineffective for not appealing the denial of his motion to quash arrest and suppress evidence, (2) the police violated his fourth and fourteenth amendment rights through a warrantless arrest and an unreasonable search and seizure, (3) his appellate counsel on direct appeal was ineffective by failing to review the trial record where McCree complained that his confession was the product of physical coercion, (4) he was prepared to present additional facts that officers and detectives involved with his arrest and detention were responsible for allowing him to be tortured into a confession, (5) the State committed a *Brady* violation by failing to turn over evidence of the pattern and practice of physical abuse by law enforcement officers, (6) his appellate counsel on direct appeal was ineffective for failing to adequately investigate the record for a violation of his due process rights where the circuit court denied McCree's motion for substitution of trial counsel, (7) the circuit court denied him due process by denying his motion for substitution of trial counsel, (8) his appellate counsel on direct appeal was ineffective for failing to raise all of McCree's ineffective assistance of trial counsel claims on direct appeal, (9) his trial counsel was ineffective for failing to investigate the background of one

of the State's witnesses, which McCree contended deprived him of his right to confront that witness at trial who he believed gave false statements against him, as well as all the law enforcement officers involved in his torture and the cover-up of that torture, and (10) his appellate counsel on direct appeal was ineffective for failing to raise the issue of the State's use of perjured testimony at trial.

¶ 7 Attached to McCree's postconviction petition was a four-page "Motion to Proceed With Late Filing Due to Mr. McCree's Well[-]Documented Psychological Problem, and Lack of Comprehension, Due to 7th Grade Education." He asserted that he had "psychological problems that started well before he was convicted of any crime" and that he "tried to seek help at Cermack Health [S]ervices of Cook County well before trial," that he had been diagnosed with schizoaffective disorder and antisocial personality disorder, and that his psychological problems affected his delivery of the postconviction petition. He attached documents to his motion that suggest that he had a consultation at Cermak Health Services in July 2002, although most of those documents that appear in the record on appeal are indecipherable. He also included a mental health evaluation dated January 30, 2005, which sets forth the basis for a diagnosis of schizoaffective disorder and antisocial personality disorder, and provides for a treatment plan.

¶ 8 On September 9, 2013, the circuit court entered a written order dismissing McCree's petition, concluding that all of his claims were frivolous and patently without merit. McCree filed a late notice of appeal, which we allowed.

¶ 9 ANALYSIS

¶ 10 On appeal, McCree argues that his trial counsel was ineffective for (1) failing to investigate McCree's mental illness and to present McCree's limited education as support for a motion to suppress, and (2) failing to use his limited education as support for a motion to

suppress his custodial statements. McCree acknowledges that he “did not make the legal claims” in his petition that he pursues on appeal, but attempts to avoid the State’s forfeiture arguments by claiming that his postconviction petition did assert that both his trial and appellate counsel were ineffective, and that the motion accompanying the petition set forth sufficient facts to establish “his poor mental health and low education.” McCree argues that, taken together, his petition and his verified motion present sufficient factual allegations to support his claims on appeal, and that by invoking *Strickland* in his petition as the legal basis for his postconviction claims, he has not forfeited the specific claims of ineffective assistance of counsel that he pursues on appeal. We disagree.

¶ 11 “The Illinois Post-Conviction Hearing Act provides a mechanism by which those under criminal sentences in this state can assert that their convictions were the result of a substantial denial of their rights under the United States Constitution or the Illinois Constitution or both.” *People v. Jones*, 213 Ill. 2d 498, 503 (2004). Section 122-2 of the Act requires that a petition under the Act “identify the proceeding in which the petitioner was convicted, give the date of the rendition of the final judgment complained of, and clearly set forth the respects in which petitioner’s constitutional rights were violated.” 725 ILCS 5/122-2 (West 2012). “Any claim of substantial denial of constitutional rights not raised in the original or an amended petition is waived.” 725 ILCS 5/122-3 (West 2012). It has long been recognized that we liberally construe the allegations of the petition to determine whether they sufficiently invoke relief under the Act. See *People v. Coleman*, 183 Ill. 2d 366, 388 (1998). However, “claims not raised in a petition cannot be argued for the first time on appeal.” *Jones*, 213 Ill. 2d at 505-06.

¶ 12 McCree’s petition sets forth various, specific claims that his appellate and trial counsel were ineffective. The claims he pursues on appeal are not expressly set forth in the petition.

Having reviewed the petition and the materials attached to the petition, and accepting as true all of the factual allegations and construing them liberally, we cannot say that McCree's petition asserts any claim related to his trial counsel's failure to investigate his mental health or assert either his psychological problems or limited education in support of his pretrial motions. McCree asserts that his psychological problems and limited education prevented him from timely submitting his postconviction petition, but those assertions are untethered from any allegation that his trial counsel was ineffective. McCree's petition does not set forth the claims of ineffective assistance of counsel that he pursues on appeal, resulting in forfeiture of these claims on appeal. *People v. Reed*, 2014 IL App (1st) 122610, ¶ 63. The proper procedure for asserting a claim discovered after the dismissal of a postconviction petition is to seek leave to file a successive postconviction petition in the circuit court, provided that the petitioner can satisfy the cause and prejudice test. See *Jones*, 213 Ill. 2d at 508 (citing *People v. Jones*, 211 Ill. 2d 140, 148-49 (2004)).

¶ 13 As our supreme court made clear in *Jones*, the appellate court lacks supervisory authority to excuse appellate waiver caused by a petitioner's failure to include issues in a postconviction petition. *Jones*, 213 Ill. 2d at 508. We therefore decline to alternatively address McCree's appellate arguments on their merits, and express no opinion as to whether the claims advanced on appeal are barred by any other rule or doctrine, or whether they could or should have been raised on direct appeal. McCree does not raise any argument with respect to the claims that he did assert in his postconviction petition, and has therefore forfeited any argument that the trial court erred in dismissing his petition. Ill. S. Ct. R. 341(h)(7) (eff. Feb. 6, 2013).

¶ 14

CONCLUSION

¶ 15 For the foregoing reasons, the judgment of the circuit court is affirmed.

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¶ 16 Affirmed.