

No. 1-14-3380

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).

IN THE
APPELLATE COURT OF ILLINOIS
FIRST DISTRICT

THE PEOPLE OF THE STATE OF ILLINOIS,)	Appeal from the
) Circuit Court of
) Cook County
Respondent-Appellee,)	
) No. 95 CR 22442
v.)	
)
JOSE GARCIA,)	Honorable
) James B. Linn,
Petitioner-Appellant.)	Judge, Presiding.

PRESIDING JUSTICE HOFFMAN delivered the judgment of the court.
Justices Rochford and Delort concurred in the judgment.

ORDER

¶ 1 *Held:* The judgment of the circuit court, which denied the defendant leave to file a successive post-conviction petition, was affirmed where the defendant failed to satisfy the cause prong of the cause-and-prejudice test on his claim that the police coerced him into confessing.

¶ 2 The defendant, Jose Garcia, appeals from the circuit court's order denying him leave to file a successive petition for relief under the Post-Conviction Hearing Act (Act) (725 ILCS 5/122-1 *et seq.* (West 2014)). On appeal, he argues that the court erred by denying him leave where his petition satisfied the cause-and-prejudice test (725 ILCS 5/122-1(f) (West 2014)) on

his claim that he was denied his right to due process. For the reasons that follow, we affirm.

¶ 3 The defendant was charged by indictment with two counts of first degree murder (720 ILCS 5/9-1(a)(1), (a)(2) (West 1994)), one count of attempt first degree murder (720 ILCS 5/8-4 (West 1994)), and one count of aggravated discharge of a firearm (720 ILCS 5/24-1.2(a)(2) (West 1994)) in connection with a July 13, 1995, shooting, which resulted in the death of Alejandro Ocampo.

¶ 4 On January 19, 1996, the defendant filed a motion to suppress any confessions, statements, or admissions, alleging that he did not knowingly and intelligently waive his *Miranda* rights and that any statements he made were a result of deception and "material misrepresentations made by the police" and an assistant State's Attorney (ASA). Nowhere in the motion did the defendant allege torture or physical abuse by the police. A hearing on this motion took place on February 9 and 29, 1996.

¶ 5 At the hearing, Detective Ernest Halvorsen testified that, at approximately 3 p.m. on July 13, 1995, he was assigned to investigate Alejandro's murder. He contacted the gang crimes specialist, Detective Joe Rodriguez, who informed him that his partner, gang crimes specialist Wiora, and Frank Vukonich had taken the defendant into custody. According to Detective Halvorsen, at about 8 p.m. that day, he and Detective Rodriguez interviewed the defendant at the Area Five Police Station in Chicago. Detective Rodriguez read the defendant his *Miranda* warnings in both English and Spanish and the defendant stated that he understood them.

¶ 6 Detective Halvorsen further testified that, after talking to the defendant for 5 to 10 minutes, he interviewed Alejandro's brother, Orlando Ocampo. At approximately 8:30 p.m., Orlando along with two other witnesses—Enrique Lopez and David Martinez—identified the defendant in a physical line-up as the person who shot Alejandro. According to Detective

Halvorsen, at 10:30 p.m., he and the ASA spoke with the defendant for approximately 30 minutes. The ASA read the defendant his *Miranda* warnings and the defendant again stated that he understood them. The defendant denied shooting Alejandro and provided an alibi—he stated that, when the incident occurred, he was at the California Park Pool with his girlfriend, Nicole Alvarez. Detective Halvorsen stated that he was aware that Detective Rodriguez had spoken with Alvarez and that she was not "cooperat[ing] with the investigation." Nevertheless, Detective Halvorsen told the defendant that he had interviewed Alvarez and that she admitted the alibi was fabricated. Thereafter, the defendant admitted that he shot Alejandro.

¶ 7 Detective Halvorsen stated that he exited the room, and the ASA and the defendant continued talking alone. After 10 to 15 minutes, the ASA left to contact a court reporter who would transcribe the defendant's confession. According to Detective Halvorsen, while they were waiting for the court reporter to arrive, he took the defendant to the bathroom and gave him cigarettes as well as something to eat and drink.

¶ 8 Detective Halvorsen testified that, at approximately 1 a.m. on July 14, 1995, after the court reporter had arrived, he observed the defendant give his statement to the court reporter and the ASA. This meeting lasted approximately 15 minutes and, thereafter, the court reporter "typed up" the confession. Detective Halvorsen further stated that, at 2:15 a.m., once the court reporter had finished typing the confession, he and the ASA had the defendant read the first paragraph of it aloud. Thereafter, the ASA read the confession to the defendant while the defendant followed along and made corrections and additions. Detective Halvorsen, the ASA, and the defendant signed each page of the statement as they finished reading it. This review took 30 to 40 minutes.

¶ 9 According to Detective Halvorsen, the ASA noticed some scratches under the defendant's right eye and asked how they were sustained. The defendant explained that, after he shot Alejandro, he rode his bicycle to a river to dispose of the gun and he received the scratches when he fell off of his bicycle. The ASA supplemented the defendant's written confession with his explanation and took a picture of the defendant to document the scratches.

¶ 10 The defendant also testified at the hearing on his motion to suppress. He stated that he did not go to school and could not read or write English. He confirmed that he was "questioned by Detective Halvorsen" and talked to the ASA on July 13 and 14, 1995, but stated that he did not understand the *Miranda* warnings that he was given. According to the defendant, when he first arrived at the police station, he was interviewed by two detectives. On cross examination, when asked if "one of [those detectives] was *** Spanish speaking," the defendant stated, "Two of them. Both of them talk to me in English." Thereafter, the following colloquy occurred:

"Q *** [Y]ou spoke with just the [S]tate's [A]ttorney and yourself, isn't that right?

A Yes, ma'am.

Q And at that time he asked you how you had been treated during that day, didn't he?

A Yes, ma'am.

Q You told him you had been treated fine, didn't you?

A No, ma'am.

Q What did you tell him?

A I didn't tell him nothing. I was just quiet.

Q You never answered his questions. You had been treated fine by the police that day, isn't that true?

A Not really.

Q How had you been treated?

A When I first got there, they were slapping me around.

Q What specifically did they do to you?

A Hit me in my head and hit me in the face.

Q Who did that to you?

* * *

A The officer.

Q Which officer?

A It was about three of them. One of them came in and said I was supposed to be there, and I told him where I was at, and he didn't believe me and began slapping me around.

Q Is that the officer that testified earlier in court?

A It was his partner.

Q Was it the [H]ispanic officer?

A I think he was [H]ispanic.

Q Tell me what he looked like?

A He had short hair; he was kind of tall; like blond hair pushed back. I think he was [H]ispanic, too, though.

Q Did he have any mustache or anything?

A Yeah, he had a mustache.

Q Did he tell you what his name was at anytime?

A No, ma'am.

Q What specifically did he do to you? Tell me what he did?

A He came in the room and sat down next to me and told me what happened, and I told him I don't know. He like you lying to me. I ain't lying to you. He said okay, you keep on lying to me all right. So he hit me in the head.

Q How did he hit you in the head?

A Just smacked me in the head.

* * *

Q Did you ever tell the [S]tate's [A]ttorney when you spoke with him alone that this officer had struck you in the head?

A They told me if I said something, they would take me back to the room.

Q Who told you?

A The officer, [H]ispanic."

¶ 11 The defendant also stated that, before he gave his confession in front of the court reporter, "the police" told him that if he said "something wrong [they were] going to take [him] back to the room." The defendant affirmed that, in his written confession, the ASA added the paragraph regarding how he sustained the scratches under his eye. However, according to the defendant, he "never fell off" his bicycle; the ASA "made this *** up."

¶ 12 In rebuttal, the State called the ASA who witnessed the defendant's confession at the police station. His testimony corroborated the testimony of Detective Halvorsen. The ASA added that he and the defendant had the opportunity to talk alone, and at that time, he asked the

defendant how the police had treated him. The defendant replied, "fine." The defendant did not tell the ASA that he had been "slapped around *** by a [H]ispanic detective or officer."

¶ 13 The hearing was continued to February 29, 1996. On that date, Detective Rodriguez testified that he did not hit the defendant and that he did not observe any other officers hitting the defendant at the police station on July 13 and 14, 1995.

¶ 14 At the conclusion of the hearing, the circuit court denied the defendant's motion to suppress, finding that his confession was not the result of deception because, when Alvarez refused to cooperate with or talk to the police, she was essentially refusing to corroborate his alibi. As to the defendant's "physical condition at the time" he confessed, the court found that the testimony of Detective Rodriguez was credible, *i.e.*, that the defendant was not physically abused by the police. In finding that the defendant voluntarily confessed, the court also considered the defendant's age, intelligence, and prior contacts with the legal system as well as whether the police made any threats or promises in exchange for the confession. It further noted that the defendant was given his *Miranda* warnings in both English and Spanish.

¶ 15 The case proceeded to a jury trial on August 12 and 13, 1996. The evidence presented by the State at trial established that, at approximately 2 p.m. on July 13, 1995, the defendant was riding in a car with several of his fellow gang members when they drove past Alejandro and Orlando. The defendant and the others in the car flashed gang signs and yelled gang slogans. Alejandro and Orlando were members of a rival gang and they indicated that by returning their own signs and slurs. Later, the defendant and his group drove to the Ocampo residence where they stopped and threw bricks at Alejandro, Orlando, and several of their friends who were sitting on the front porch. They then drove away. At about 2:10 p.m., after dropping off the other passengers, the defendant and Artemio Rodriguez drove past the Ocampos' house yet

again. The defendant, who was sitting in the front passenger seat and holding a gun, reached out of the car and shot Alejandro multiple times. Alejandro died as a result.

¶ 16 After the defendant's confession was read into the record, the State rested.

¶ 17 The defense called John Boyle, the director of the California Park Pool, as a witness. Boyle testified that, between 2 and 2:15 p.m. on July 13, 1995, he saw the defendant at the pool. Boyle stated that he remembered because the defendant asked him to let Alvarez enter the pool after it had closed.

¶ 18 The parties stipulated that, if Detective Halverson was called to testify, he would state, *inter alia*, that, during the interrogation, he lied to the defendant when he stated that Alvarez had been interviewed and she did not corroborate the defendant's alibi. Thereafter, the defense rested.

¶ 19 After deliberations, the jury found the defendant guilty of first degree murder and aggravated discharge of a firearm, and not guilty of attempt first degree murder. The circuit court sentenced him to 60 years' imprisonment for the first degree murder conviction and 15 years' imprisonment for the aggravated discharge of a firearm conviction, to run concurrently. The defendant filed a motion for a new trial, broadly alleging, *inter alia*, that the circuit court "erred in denying [his] pre[-]trial motion to suppress evidence." The circuit court denied this motion.

¶ 20 On direct appeal, this court affirmed the defendant's conviction and sentence, rejecting his contention that his sentence of 60 years was excessive. *People v. Garcia*, No. 1-96-4241 (Feb. 20, 1998) (unpublished order under Supreme Court Rule 23).

¶ 21 On November 30, 1998, the defendant filed a *pro se* post-conviction petition, alleging, *inter alia*, that: (1) he did not knowingly and intelligently waive his *Miranda* rights; and (2) his

appellate counsel was ineffective for failing to argue that his confession was not knowingly and intelligently made. None of the defendant's claims alleged physical abuse or coercion by the police. The circuit court summarily dismissed this petition at the first stage of the proceedings, and its decision was affirmed by this court on appeal. *People v. Garcia*, No. 1-99-0161 (Feb. 8, 2001) (unpublished order under Supreme Court Rule 23).

¶ 22 On July 17, 2003, the defendant, *pro se*, filed his first successive petition for post-conviction relief. He was subsequently appointed counsel and, on February 22, 2006, his attorney filed a supplemental petition raising claims of ineffective assistance of trial and appellate counsel. The defendant, through his attorney, alleged that his trial counsel was ineffective for failing to inform the clinical psychologist that he "had no education in English or Spanish language." His two other ineffective-assistance-of-trial-counsel claims were based upon issues relating to the *voir dire* examination of jurors and the defendant's death penalty eligibility. The defendant also alleged that his appellate counsel provided ineffective assistance by failing to argue that the circuit court erred in barring Detective Rodriguez's testimony that, when the defendant was being arrested, the defendant and Alvarez made "excited utterance[s]" denying his participation in the offense. The State filed a motion to dismiss the defendant's petition, alleging that the petition was untimely and that the defendant did not meet the requirements of the cause-and-prejudice test.

¶ 23 After conducting a hearing on June 28, 2006, the circuit court denied the State's motion to dismiss and the matter proceeded to a third-stage evidentiary hearing on the merits. Ultimately, the court denied the defendant's first successive petition, finding that he was not deprived of his constitutional right to effective assistance of counsel and, thus, he was not entitled to a new trial. The defendant appealed that ruling and was appointed the State Appellate Defender as counsel.

The State Appellate Defender later filed a motion requesting leave to withdraw as counsel pursuant to *Pennsylvania v. Finley*, 481 U.S. 551, 107 S. Ct. 1990 (1987). Upon review, this court found no issues of arguable merit and, therefore, granted the motion to withdraw and affirmed the circuit court's order denying the defendant's petition. *People v. Garcia*, No. 1-06-2063 (Dec. 18, 2007) (unpublished order under Supreme Court Rule 23).

¶ 24 In November 2013, the defendant filed a petition for mandamus pursuant to section 14-101 *et seq.* of the Code of Civil Procedure (Code) (735 ILCS 5/14-101 *et seq.* (West 2012)), demanding that the State provide him with the record of his case so that he could prepare an actual innocence claim. The defendant also filed a *pro se* petition for relief from judgment pursuant to section 2-1401(f) of the Code (735 ILCS 5/2-1401(f) (West 2012)), alleging that his statutorily-imposed mandatory supervised release violated his constitutional rights and was void. On November 19, 2013, the circuit court denied both of the petitions and its orders were affirmed on appeal. *People v. Garcia*, No. 1-14-0885 (July 31, 2015) (unpublished order under Supreme Court Rule 23).

¶ 25 On July 10, 2014, the defendant filed a *pro se* motion for leave to file his second successive post-conviction petition under the Act. He attached the proposed petition, which alleged that he was denied a fair trial because newly discovered evidence showed his actual innocence—the new evidence being "a clear pattern and practice of misconduct and abuse by police"—and that the State "withheld" or "fail[ed] to disclose" this evidence. Specifically, the defendant argued, in relevant part, that he made a false confession and that "key occurrence witnesses," such as Artemio, made statements inculcating him because they were abused and threatened during their interrogations by Detective Reynaldo Guevara. According to the defendant, he falsely confessed to Alejandro's murder because Detective Guevara "began

slapping him around while accusing him of lying and claiming to have already learned the truth from others" and he was "held in isolation" for an extended period of time. Because the defendant was "terrified and the situation appeared hopeless," he "agreed to say whatever Det[ective] Guevara wanted him to say." He further contended that, if Artemio had testified at his trial, Artemio would have corroborated Boyle's testimony that he was at a swimming pool at the time the shooting occurred; however, Artemio did not testify because he was also coerced by the police.

¶ 26 In his second successive petition, the defendant also relied on *People v. Almodovar*, 2013 IL App (1st) 101476, *People v. Montanez*, 273 Ill. App. 3d 844 (1995), and *People v. Reyes*, 369 Ill. App. 3d 1 (2006), to support his claim that Detective Guevara coerced him to confess. He alleged that these cases evince that this type of behavior "has clearly happened with numerous defendants at the Area Five Police Headquarters in Chicago." He went on: "Det[ective] Guevara's misconduct was also involved in the confession obtained from the minor defendant in *Montanez*."

¶ 27 As an exhibit to his second successive petition, the defendant attached, *inter alia*, the affidavit of Artemio. Artemio averred, in relevant part, that he made a false statement implicating the defendant because the police threatened and made promises to him in order to get him to "talk[]." The defendant also attached to the petition Artemio's written statement to the police, which is signed by Artemio, Detective Guevara, and an assistant State's Attorney. The petition also contains two news articles—published in 2009 and 2011—which discuss Detective Guevara's abuse and threats in other criminal cases.

¶ 28 On September 9, 2014, the circuit court denied the defendant's motion for leave to file his second successive post-conviction petition, finding that he did "not assert that anything Detective

Gavara [*sic*] did shows that he's actually innocent nor does he show that these other cases that Detective Gavara [*sic*] may have been involved with somehow would impact [or] *** be relevant [to] this matter." The court also noted that, in the petition, the defendant did not allege that "his confession [was] false[—]just that it was coerced."

¶ 29 This appeal followed.

¶ 30 On appeal, the defendant contends that the circuit court erred in denying him leave to file a successive petition for postconviction relief where he satisfied the cause-and-prejudice test on his constitutional claim that he was denied due process.

¶ 31 "The Act contemplates the filing of only one petition without leave of court (725 ILCS 5/122-1(f) (West 2014)), and any claim not presented in an original or amended petition is waived. 725 ILCS 5/122-3 (West 2014)." *People v. Sanders*, 2016 IL 118123, ¶ 24. Therefore, in order to file a successive post-conviction petition, "a defendant faces immense procedural default hurdles." *People v. Tenner*, 206 Ill. 2d 381, 392 (2002). "Because successive petitions plague the finality of criminal litigation, these hurdles are [only] lowered in" two circumstances. *Id.*; *Sanders*, 2016 IL 118123, ¶ 24. The first is where the defendant satisfies the cause-and-prejudice test; the second is where he demonstrates actual innocence. *Sanders*, 2016 IL 118123, ¶ 24. Under the cause-and-prejudice test, a defendant must show "cause by identifying an objective factor that impeded his *** ability to raise a specific claim during his *** initial post-conviction proceedings" and "prejudice by demonstrating that the claim not raised during his *** initial post-conviction proceedings so infected the trial that the resulting conviction or sentence violated due process." 725 ILCS 5/122-1(f) (West 2014). Both cause and prejudice must be established in order to file a successive post-conviction petition. See *People v. Edwards*, 2012 IL App (1st) 091651, ¶ 32 ("both prongs must be met before leave to file a successive petition

will be granted"). We review a circuit court's denial of a motion for leave to file a successive petition *de novo*. *Almodovar*, 2013 IL App (1st) 101476, ¶ 59.

¶ 32 Here, the defendant argues that he satisfied the cause prong of the cause-and-prejudice test because evidence supporting his coerced-confession claim recently came to light; namely, numerous allegations against Detective Guevara for using physical force against suspects and for improperly influencing witnesses. He also contends that he has shown prejudice because a physically coerced confession is never harmless error and "evidence [regarding misconduct] lends considerable credibility to his allegation that [Detective] Guevara beat him until he confessed, and that the admission of that confession at his trial violated due process."

¶ 33 We first address whether the defendant has satisfied the cause prong of the cause-and-prejudice test.

¶ 34 Initially, we note that, in his appellate brief, the defendant attached the amended post-conviction petition and exhibits from *Reyes*, 369 Ill. App. 3d 1, which compiled several accusations against Detective Guevara based upon incidents occurring from 1982 through 1999. In doing so, he argues that we should take judicial notice of this "additional evidence detailing Guevara's pattern and practice of physical violence against suspects and witnesses" because it is public record. According to the State, we should decline to consider these documents because they were not presented to the circuit court and, thus, they are not part of the record on appeal. We agree with the defendant and take judicial notice of the fact that, in their amended post-conviction petition and its supporting documents, the defendants in *Reyes* set forth many allegations of misconduct by Detective Guevara. See *People v. Mann*, 341 Ill. App. 3d 832, 835 (2003) (where the reviewing court took judicial notice of a common-law record because the

matters were capable of immediate and accurate demonstration by resort to an easily accessible source of indisputable accuracy).

¶ 35 We now reach the merits. The record conveys that Detective Guevara worked on this case to some degree. Artemio's statement to the police, which is included as an exhibit to the second successive petition, has Detective Guevara's signature on the bottom of each page. Additionally, a supplementary police report lists Detective Guevara as the "reporting officer;" Detectives Rodriguez, Wiora, and Vukonich as the arresting officers; and Detectives Rodriguez and Halvorsen as the interviewing officers. We find that, even if the defendant did interact with Detective Guevara, he has failed to identify an "objective factor" that impeded his ability to raise his coerced-confession claim in an earlier proceeding. 725 ILCS 5/122-1(f) (West 2014).

¶ 36 We find *People v. Terry*, 2016 IL App (1st) 140555, persuasive. In *Terry*, the defendant testified at a hearing on his motion to suppress statements that the police physically and mentally coerced him into making a confession. *Id.* ¶¶ 12-13. The circuit court denied the motion and the defendant "did not challenge his inculpatory statement in either his direct appeal or in his initial postconviction proceeding." *Id.* ¶¶ 15, 33. He waited until his successive post-conviction petition to again allege that his confession was the result of coercion by the police. *Id.* ¶ 20. The defendant attached supporting documents to this petition—most importantly, a report regarding torture by police in Chicago—which allegedly substantiated his claim of physical coercion. *Id.* ¶¶ 21, 29.

¶ 37 The circuit court denied the defendant leave to file the successive post-conviction petition and he appealed. *Terry*, 2016 IL App (1st) 140555, ¶¶ 23, 29. On appeal, this court affirmed the circuit court's judgment, finding, *inter alia*, that the defendant did not meet the

cause prong of the cause-and-prejudice test. *Id.* ¶¶ 31, 41. In so holding, this court explained that:

"[the] defendant's claim that he was physically coerced into confessing could have been raised on direct appeal, *i.e.*, he could have challenged the [circuit] court's denial of his motion to suppress statements, but he did not. [Citation.] Additionally, having known all of the facts necessary to raise this claim prior to the filing of his initial petition, [the] defendant cannot establish cause for his failure to raise it in his initial petition. [Citation.]" *Id.* ¶ 33.

This court went on:

"Although the [report regarding torture by police in Chicago] may, as [the] defendant argues on appeal, serve to corroborate the general proposition that Chicago police officers used physical coercion to obtain statements from suspects, this additional evidence does not explain why [the] defendant could not have raised this specific claim in his first post[-]conviction proceeding. See *People v. Green*, 2012 IL App (4th) 101034, ¶ 40 *** (although the defendant uncovered additional evidence to support his claim, that does not make that claim new)." *Id.* ¶ 35.

¶ 38 In the case at hand, although the defendant could not have included *Almodovar*, 2013 IL App (1st) 101476, *Reyes*, 369 Ill. App. 3d 1 (2006), and the 2009 and 2011 news articles in his direct appeal, initial post-conviction petition or first successive petition—because they had not been published yet—this does not explain his failure to raise any sort of coerced-confession claim in earlier proceedings. See *People v. LaPointe*, 365 Ill. App. 3d 914, 924 (2006). The abuse allegations in his second successive petition are the same as those from his testimony at

the hearing on his motion to suppress statements in 1996. The defendant had to have been aware of these allegations since July 13 and 14, 1995—when the coercion allegedly occurred. Nonetheless, after the circuit court denied his motion to suppress, the defendant "abandon[ed] these allegations and did not address them" on direct appeal, in his first and second post-conviction petitions, or in his petition for relief from judgment. See *People v. Anderson*, 375 Ill. App. 3d 121, 132-33 (2007). Rather, he waited 18 years, until his second successive post-conviction petition in July 2014, to raise the coercion claim again. "As we find that [the] defendant could have brought this claim earlier, his failure to do so results in the forfeiture of this claim." *Id.* at 133, citing *People v. Blair*, 215 Ill. 2d 427, 445 (2005).

¶ 39 Furthermore, we reject the defendant's argument that the additional evidence regarding Detective Guevara's misconduct and abuse did not become "reasonably discoverable" until after he had filed his initial and first successive post-conviction petitions. In making this argument, he fails to acknowledge that he relied on *Montanez*, 273 Ill. App. 3d 844, in his second successive petition. In *Montanez*, a 15-year-old defendant underwent police questioning and confessed prior to seeing either a youth officer or her mother. *Id.* at 849. Detective Guevara was one of the police officers assigned to this case. *Id.* at 845. This court held that the defendant's confession was not voluntary where she "was interrogated throughout the night as part of a pattern of police conduct designed to elicit a confession, as well as to obstruct parental" counseling. *Id.* at 855. This court published *Montanez* in June 1995—before the defendant was even arrested. Accordingly, *Montanez* was available not only when the defendant filed his initial and first successive post-conviction petitions, but when the hearing on his motion to suppress and the trial took place.

¶ 40 In so holding, we also note that, although the defendant attached the affidavit of Artemio to his second successive petition as newly-discovered evidence, on appeal, he fails to state why Artemio's averments were not "reasonably discoverable" before 2014—when he filed the petition at issue.

¶ 41 Having found that the defendant did not meet the cause prong, we need not determine whether he satisfied the prejudice prong. *People v. Brown*, 225 Ill. 2d 188, 207 (2007) (holding that "it is not necessary" for a court to consider one prong if it has already found that the other prong is lacking).

¶ 42 Accordingly, we find that the circuit court of Cook County properly denied the defendant leave to file his second successive post-conviction petition, and we affirm its judgment.

¶ 43 Affirmed.