

NOTICE

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2017 IL App (4th) 150008-U

NO. 4-15-0008

FILED

June 7, 2017
Carla Bender
4th District Appellate
Court, IL

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
JOHN D. HAYWOOD,)	No. 07CF567
Defendant-Appellant.)	
)	Honorable
)	Thomas J. Difanis,
)	Judge Presiding.

PRESIDING JUSTICE TURNER delivered the judgment of the court.
Justices Appleton and Knecht concurred in the judgment.

ORDER

- ¶ 1 *Held:* The appellate court granted appellate counsel's motion to withdraw and affirmed the trial court's judgment.
- ¶ 2 In June 2007, a jury found defendant, John D. Haywood, guilty of child pornography, unlawful possession of firearm ammunition by a felon, and being an armed habitual criminal. The trial court sentenced him to 30 years in prison on the armed-habitual-criminal conviction, 15 years for child pornography, and 30 years for unlawful possession of firearm ammunition by a felon. On direct appeal, this court affirmed defendant's convictions and sentences. In November 2009, defendant filed a *pro se* petition for postconviction relief, which the trial court dismissed after finding it frivolous and patently without merit. This court affirmed the trial court's judgment. In May and November 2012, defendant filed motions for leave to file a successive postconviction petition, which were denied by the trial court. On

appeal, this court granted the motion to withdraw filed by the office of the State Appellate Defender (OSAD) and affirmed the trial court's judgment. In November 2014, defendant filed a third motion for leave to file a successive postconviction petition, which the trial court denied.

¶ 3 On appeal, OSAD moves to withdraw its representation of defendant, citing *Pennsylvania v. Finley*, 481 U.S. 551 (1987), contending an appeal in this cause would be without merit. We grant OSAD's motion and affirm the trial court's judgment.

¶ 4 I. BACKGROUND

¶ 5 In April 2007, a grand jury indicted defendant on single counts of being an armed habitual criminal (count I) (720 ILCS 5/24-1.7(a)(1) (West 2006)), child pornography (count II) (720 ILCS 5/11-20.1(a)(1)(vii) (West 2006)), and unlawful possession of firearm ammunition by a felon (count III) (720 ILCS 5/24-1.1(a) (West 2006)). Defendant pleaded not guilty. In May 2007, defense counsel filed a motion to sever the counts, which the trial court denied.

¶ 6 In June 2007, defendant's jury trial commenced. B.D., born in 1990, testified she and two other girls called defendant in May 2006 because they were late for school. He picked them up, took them to McDonald's, and then took them to school. In July 2006, B.D. met Pearl Bigham, and Bigham would let her drink and "have boys over" to her house. In December 2006, when she was 16 years old, B.D. and Bigham went over to defendant's house. Defendant provided them with cranberry juice and vodka. He then told B.D. and Bigham to take off their clothes. While B.D. and Bigham were lying naked on the bed, defendant told them to "go at it," which B.D. believed meant they were to engage in oral sex. B.D. refused. When defendant pulled the covers off the bed, B.D. used a pillow to cover her body below her breasts.

¶ 7 B.D. testified defendant had been talking about "his connections" and pulled out a gun from under a pillow. B.D. also saw a bulletproof vest in the bedroom. Near the television,

she saw a video camera. She did not know she was being videotaped. Defendant told her the camera was not on. B.D. told Bigham she had school the next day so they left.

¶ 8 Pearl Bigham testified she was 27 years old. Prior to defendant's trial, Bigham pleaded guilty to child pornography in connection with the filming of B.D. in defendant's home. Bigham testified she dated defendant between January and March 2006. Bigham let B.D. stay over at her house. In late November or early December 2006, Bigham took B.D. over to defendant's house. After making them drinks, defendant told B.D. and Bigham to strip. They took off their clothes and sat on the bed. Defendant wanted B.D. to perform oral sex on Bigham, but B.D. refused. During that night, Bigham saw defendant pull a gun out from underneath a pillow. He waved the gun around "for a little bit" and then put it on his person. Bigham also saw a bulletproof vest in his bedroom. Defendant kept a video camera in the bedroom, but Bigham did not know whether it was on.

¶ 9 Champaign County sheriff's deputy Jason Atwood testified he assisted in the execution of a search warrant at defendant's house at 4312 East Airport Road in December 2006. He photographed a video camera in the living room and removed the videotape. He also seized a bulletproof vest from the master bedroom. In the kitchen, he found rifle cartridges, a .22-caliber round, and seven .38-caliber rounds. In a bedroom, Atwood found 38 rounds of .38-caliber ammunition. He stated he did not recover any items that led him to believe anyone other than defendant lived at the residence.

¶ 10 The State played the videotape showing defendant, Bigham, and B.D. to the jury. The parties stipulated that defendant had two or more specifically required felony offenses for purposes of the armed-habitual-criminal charge.

¶ 11 Defendant testified on his own behalf. He stated he worked in construction and as

a security guard at local clubs. He testified he did not own a gun and did not put any ammunition in his house. He bought the protective vest for use in his security work. Relatives and acquaintances had keys to his house, and some stayed in his guest rooms.

¶ 12 Defendant stated he met B.D. through Bigham, with whom he had a sexual relationship. He thought B.D. was approximately 19 to 20 years old. Defendant assumed B.D. was Bigham's girlfriend because the latter was bisexual. Defendant did not know how old B.D. was, and he never had sex with her. Bigham and B.D. came to defendant's house late in the evening in December 2006. When they arrived, they went into defendant's bedroom. When defendant entered, Bigham and B.D. were lying naked on the bed. Defendant had set cameras up in his bedroom and living room because he was preparing to film a weekend orgy for his birthday. In setting up the cameras, he "inadvertently hit the record button." He believed the camera was off. On the video, he pulled his wallet out from underneath the pillow because he did not trust Bigham and B.D.

¶ 13 The jury found defendant guilty on all counts. In June 2007, defense counsel filed a posttrial motion. In July 2007, defendant filed a *pro se* posttrial motion and also asked to represent himself. In August 2007, defense counsel moved to withdraw, which the trial court allowed. Thereafter, the court denied the posttrial motions.

¶ 14 In October 2007, the trial court sentenced defendant to 35 years in prison for unlawful possession of firearm ammunition by a felon (count III), 30 years for his conviction as an armed habitual criminal (count I), and 15 years for child pornography (count II). The court ordered counts I and II to be served consecutively and count III to run concurrently with count I.

¶ 15 Defense counsel filed a motion to reconsider the sentence. In February 2008, the trial court granted the motion in part and reduced defendant's sentence on count III to 30 years in

prison.

¶ 16 Defendant appealed, arguing the trial court erred in (1) denying his motion to sever the counts, (2) failing to properly instruct the jury at *voir dire*, and (3) imposing consecutive sentences. This court affirmed his convictions and sentences. *People v. Haywood*, No. 4-08-0165 (Jan. 27, 2009) (unpublished order under Supreme Court Rule 23).

¶ 17 In November 2009, defendant filed a *pro se* petition for postconviction relief under the Post-Conviction Hearing Act (725 ILCS 5/122-1 to 122-8 (West 2008)). Defendant argued, *inter alia*, trial counsel failed to introduce evidence of a telephone bill in the name of Jolouis Shaw at 4312 East Airport Road, which would have contradicted Deputy Atwood's testimony that he found no indicia that anyone other than defendant lived in the house. Defendant also raised the issue of ineffective assistance of counsel at trial and on appeal, and he argued the trial court should have appointed new counsel to represent him during posttrial proceedings instead of allowing him to proceed *pro se*.

¶ 18 In November 2009, the trial court dismissed the petition, finding it frivolous and patently without merit. In December 2009, defendant filed a *pro se* motion for reconsideration, which the court denied. On appeal, this court affirmed the trial court's judgment. *People v. Haywood*, 2011 IL App (4th) 090969-U.

¶ 19 In May 2012, defendant filed a motion for leave to file a successive post-conviction petition. Therein, he alleged (1) the State used perjured testimony during grand jury proceedings; (2) he was not arraigned on count III; (3) his statutory speedy trial right was violated; and (4) his charges should have been severed. In June 2012, the trial court denied defendant's motion. Defendant filed a notice of appeal (No. 4-12-0536).

¶ 20 In October 2012, defendant filed an additional motion for leave to file a

successive postconviction petition. Defendant argued his conviction was due to testimony that was later recanted. He also argued the trial court, the prosecutor, and trial counsel allowed a State instruction for an affirmative defense on count I, where no affirmative defense was put forth by the defense. In November 2012, the trial court denied defendant's motion. Defendant filed a notice of appeal (No. 4-12-1099), and this court consolidated the appeals. Thereafter, this court affirmed the trial court's judgment and granted OSAD's motion to withdraw. *People v. Haywood*, Nos. 4-12-0536, 4-12-1099 cons. (Jan. 16, 2014) (unpublished summary order under Supreme Court Rule 23(c)).

¶ 21 In November 2014, defendant filed his third motion for leave to file a successive postconviction petition and his fourth postconviction petition. In his motion, defendant raised a claim of actual innocence and stated he had not raised the issue previously because of the ineffective assistance of trial and appellate counsel. He also claimed the trial court denied his motion to view evidence, to have an expert review the video, and to have a photocopy of the bar codes from the ammunition boxes. Defendant stated a new computer application could scan the bar codes and give the price and location of the purchase. Defendant claimed this new evidence could prove his innocence, as it would show to whom the ammunition belonged and when it was purchased.

¶ 22 In his affidavit, defendant stated he wished to recant his trial testimony that he must have inadvertently pressed the record button on his video camera and claimed instead the video played at his trial could not have been recorded by his video camera. In his petition, defendant claimed trial counsel was ineffective for failing to (1) hire an expert videographer; (2) investigate the recovered boxes of ammunition and their purchasers; and (3) interview a sheriff's deputy who investigated reports of gunshots in defendant's backyard and found two men, neither

of whom were defendant, firing a rifle at targets. Defendant also argued that had counsel interviewed an employee from Best Buy, where the video camera was purchased, the employee would have explained the camera could not have produced the videotape introduced at trial.

¶ 23 The trial court denied defendant's motion for leave to file a successive postconviction petition. The court stated defendant was not charged with purchasing the ammunition in question but possessing it. Further, the court found all of the other issues pertaining to defendant's claim of actual innocence had been decided on appeal. Defendant filed a motion to reconsider, which the court denied. This appeal followed.

¶ 24 II. ANALYSIS

¶ 25 On appeal, OSAD has filed a motion to withdraw as counsel and has included a supporting memorandum. Proof of service has been shown on defendant. This court granted defendant leave to file additional points and authorities on or before March 8, 2017. None have been filed. Based on our examination of the record, we conclude, as has OSAD, that an appeal in this cause would be meritless.

¶ 26 In the case *sub judice*, OSAD argues no colorable argument can be made that the trial court erred in denying defendant's motion for leave to file a third successive postconviction petition. Specifically, OSAD contends no colorable argument can be made that defendant demonstrated a claim of actual innocence or established cause and prejudice for failing to claim ineffective assistance of trial and appellate counsel in his previous petitions. Our review of the record reveals OSAD is correct. Accordingly, we conclude no colorable claim can be made that the trial court erred in dismissing defendant's motion.

¶ 27 III. CONCLUSION

¶ 28 For the reasons stated, we grant OSAD's motion and affirm the trial court's

judgment.

¶ 29 Affirmed.