

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

July 14, 2017
Carla Bender
4th District Appellate
Court, IL

2017 IL App (4th) 150411-U

NO. 4-15-0411

IN THE APPELLATE COURT

OF ILLINOIS

FOURTH DISTRICT

THE PEOPLE OF THE STATE OF ILLINOIS,)	Appeal from
Plaintiff-Appellee,)	Circuit Court of
v.)	Sangamon County
MEYUNTOE L. DAVIS,)	No. 99CF44
Defendant-Appellant.)	
)	Honorable
)	Peter C. Cavanagh,
)	Judge Presiding.

JUSTICE STEIGMANN delivered the judgment of the court.
Justices Harris and Appleton concurred in the judgment.

ORDER

¶ 1 *Held:* The appellate court affirmed the trial court’s judgment denying defendant leave to file a second successive petition for postconviction relief.

¶ 2 In November 1999, a jury convicted defendant, Meyuntoe L. Davis, of first degree murder for firing a gun inside during a house party, causing the death of a partygoer. The trial court sentenced defendant to 30 years in prison. We affirmed defendant’s conviction on direct appeal. *People v. Davis*, No. 4-00-0221 (2002) (unpublished order under Supreme Court Rule 23).

¶ 3 In November 2002, defendant filed a petition for postconviction relief under the Post-Conviction Hearing Act (725 ILCS 5/122-1 to 122-8 (West 2002)), arguing that his trial and appellate counsel were ineffective. The trial court granted the State’s motion to dismiss. We affirmed. *People v. Davis*, No. 4-04-0859 (2006) (unpublished order under Supreme Court Rule 23).

¶ 4 In February 2011, defendant filed a motion for leave to file a successive postconviction petition. The trial court granted the State's motion to dismiss the successive petition. We affirmed that decision on appeal. *People v. Davis*, No. 4-12-0286 (Apr. 29, 2014) (unpublished summary order under Supreme Court Rule 23(c)(2)).

¶ 5 At issue in the present appeal is defendant's December 2014 motion for leave to file a second successive postconviction petition. In that motion, defendant claimed that trial counsel was ineffective for failing to present the testimony of two witnesses, who would have testified that defendant was intoxicated when he fired the gun at the party. The trial court denied defendant's motion.

¶ 6 Defendant appeals, arguing that the trial court erred by denying his motion for leave to file a second successive postconviction petition. For the following reasons, we disagree and affirm the trial court's judgment.

¶ 7 I. BACKGROUND

¶ 8 The following undisputed facts provide context for defendant's claim.

¶ 9 A. Defendant's Conviction

¶ 10 In January 1999, the State charged defendant with two counts of first degree murder (720 ILCS 5/9-1(a)(2), (a)(3) (West 1998)) and one count of aggravated discharge of a firearm (720 ILCS 5/24-1.2(a)(2) (West 1998)). At the November 1999 jury trial, the evidence established that defendant discharged a firearm several times inside a crowded house party. One of the shots hit partygoer Angela Willis in the head, causing her death. In addition to the charged offenses, the jury was instructed on the lesser-included offenses of involuntary manslaughter (720 ILCS 5/9-3(a) (West 1998)) and reckless conduct (720 ILCS 5/12-5(a) (West 1998)).

¶ 11 The jury initially returned verdicts of guilty on the first degree murder and reck-

less conduct charges. The trial court informed the jury that its verdicts were legally inconsistent and instructed the jury to continue its deliberations. After further deliberations, the jury returned a verdict of guilty on the first degree murder charge. The court later sentenced defendant to 30 years in prison.

¶ 12 We affirmed defendant's conviction on direct appeal, rejecting the following arguments: (1) the trial court erred in the way it instructed the jury to keep deliberating after returning inconsistent verdicts and (2) the evidence was insufficient to prove defendant guilty beyond a reasonable doubt. *Davis*, No. 4-00-0221 (Feb. 6, 2002) (unpublished order under Supreme Court Rule 23).

¶ 13 B. Defendant's First Petition for Postconviction Relief

¶ 14 In November 2002, defendant filed a petition for postconviction relief under the Act. In it, he raised claims that both trial and appellate counsel were ineffective. In particular, defendant claimed that trial counsel was ineffective for failing to (1) move to suppress statements defendant made to the police; (2) raise several objections during trial; and (3) object to the trial court's instruction after the jury returned inconsistent verdicts. The trial court granted the State's motion to dismiss, concluding that trial counsel's actions were matters of trial strategy and that the claims of appellate counsel's ineffectiveness were meritless.

¶ 15 On appeal, we affirmed the trial court's decision after allowing appellate counsel to withdraw because no meritorious issue could be raised on appeal. *Davis*, No. 4-04-0859 (Feb. 24, 2006) (unpublished order under Supreme Court Rule 23).

¶ 16 C. Defendant's Motion for Leave To File
a Successive Postconviction Petition

¶ 17 In February 2011, defendant filed a motion for leave to file a successive postconviction petition under the Act (725 ILCS 5/122-1(f) (West 2010)), along with the pro-

posed successive petition. Defendant sought to raise claims that (1) trial counsel was ineffective and (2) defendant was denied his right to due process when the State withheld exculpatory evidence. Specifically, defendant argued that trial counsel was ineffective for failing present the testimony of Aaron Suttle, who would have testified about statements defendant made shortly after the shooting stating that he discharged the firearm into a stereo cabinet and not toward any person. Defendant argued that the described testimony was probative of the fact that defendant acted recklessly instead of intentionally, which might have changed the jury's verdict.

¶ 18 Without explicitly addressing the motion for leave, the trial court appointed counsel, who filed an amended postconviction petition. In March 2012, the court granted the State's motion to dismiss the amended petition, concluding that the successive petition was untimely under section 122-1(c) of the Act (725 ILCS 5/122-1(c) (West 2010)) and that the claims could have been raised in an earlier proceeding.

¶ 19 On appeal, we affirmed the trial court's dismissal after again granting appellate counsel's request to withdraw because no meritorious issue existed on appeal. *Davis*, No. 4-12-0286 (Apr. 29, 2014) (unpublished summary order under Supreme Court Rule 23(c)(2)).

¶ 20 D. Defendant's Motion for Leave To File a
Second Successive Petition for Postconviction Relief

¶ 21 In December 2014 defendant filed a motion for leave to file a second successive postconviction petition. In it, defendant argued that trial counsel was ineffective for failing to call two witnesses, who would have testified that defendant was voluntarily intoxicated when he fired the gun during the party. Defendant asserted that such evidence would have mitigated the *mens rea* for first degree murder and persuaded the jury to find him guilty of involuntary manslaughter instead.

¶ 22 In January 2015 the State filed a response to defendant's motion, urging the trial

court to deny the motion because (1) defendant could have raised his claim in an earlier proceeding and (2) the claim lacked merit.

¶ 23 After an April 2015 hearing, the trial court denied defendant's motion, concluding that trial counsel's decision not to call the witnesses was trial strategy.

¶ 24 This appeal followed.

¶ 25 II. ANALYSIS

¶ 26 Defendant argues that the trial court erred by denying his motion for leave to file a second successive postconviction petition. We disagree.

¶ 27 A. Statutory Language and the Standard of Review

¶ 28 The Act (725 ILCS 5/122-1 to 122-7 (West 2014)) provides a remedy for defendants whose convictions resulted from substantial violations of their constitutional rights. *People v. Edwards*, 197 Ill. 2d 239, 243-44, 757 N.E.2d 442, 445 (2001). A petitioner may file only one petition under the Act unless granted leave of court to file an additional or "successive" petition. 725 ILCS 5/122-1(f) (West 2014).

¶ 29 A trial court will grant leave to file a successive petition only if the petitioner can demonstrate both "cause" and "prejudice." *Id.* A petitioner establishes cause by showing "an objective factor that impeded his or her ability to raise a specific claim during his or her initial postconviction proceedings." *Id.* To show prejudice, a petitioner must establish that the issue sought to be raised "so infected the trial that the resulting conviction or sentence violated due process." *Id.*

¶ 30 We review *de novo* the denial of leave to file a successive postconviction petition. *People v. Crenshaw*, 2015 IL App (4th) 131035, ¶ 38, 38 N.E.3d 1256.

¶ 31

B. Defendant's Claim of Cause in This Case

¶ 32

Defendant concedes that he was aware of this claim of ineffective assistance of counsel when he filed his initial postconviction petition and his motion for leave to file a first successive petition. Defendant argues, however, that he was prevented from raising this claim in those prior proceedings because he was unable to procure affidavits from the two witnesses describing their would-be testimony. Defendant claims that without those affidavits, he could not raise his claim in a postconviction petition because the Act requires that claims be supported by evidence.

¶ 33

Defendant's argument is misguided. The Act provides that a postconviction petition "shall have attached thereto affidavits, records, or other evidence supporting its allegations *or shall state why the same are not attached.*" (Emphasis added.) 725 ILCS 5/122-2 (West 2014)). A petition that neither (1) has evidentiary affidavits attached to it nor (2) explains why such affidavits are absent should be summarily dismissed. Petitioners who are unable to obtain the necessary affidavits "must at least explain why such evidence is unobtainable." *People v. Collins*, 202 Ill. 2d 59, 68, 782 N.E.2d 195, 200 (2002). Therefore, even without affidavits, defendant could have raised his claim in an earlier postconviction petition so long as he explained why no affidavits were attached. Because defendant could have raised this claim in an earlier proceeding but did not, he has failed to establish cause, and the trial court was right to deny his motion for leave to file a second successive postconviction petition.

¶ 34

C. Defendant's Claim of Prejudice in This Case

¶ 35

Defendant argues that trial counsel's failure to present testimony about defendant's intoxication "so infected the trial that the resulting conviction or sentence violated due process." 725 ILCS 5/122-1(f) (West 2014). The State has responded with counter arguments refut-

ing defendant's claim of prejudice. Although the State's arguments may have merit, we need not address them. Because defendant's motion fails for lack of cause, we need not determine whether defendant has established prejudice.

¶ 36

III. CONCLUSION

¶ 37 For the foregoing reasons, we affirm the trial court's judgment. 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(a) (West 2016).

¶ 38

Affirmed.