

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

November 6, 2017
Carla Bender
4th District Appellate
Court, IL

2017 IL App (4th) 150737-U
NO. 4-15-0737

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
BRYANT L. DOUGLAS,)	No. 07CF833
Defendant-Appellant.)	
)	Honorable
)	Jeffrey B. Ford,
)	Judge Presiding.

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

ORDER

¶ 1 *Held:* The circuit court did not err in denying defendant’s motion for leave to file a successive postconviction petition.

¶ 2 In August 2015, defendant, Bryant L. Douglas, filed *pro se* a motion for leave to file a successive postconviction petition, asserting the State’s key witness, Willie Hill, who had testified at trial he received nothing in exchange for his testimony, stated in an affidavit he was, in fact, promised reduced charges. That same month, the Champaign County circuit court entered an order, denying defendant’s request. Defendant appeals, asserting the court erred by denying him leave to file a successive postconviction petition.

¶ 3 I. BACKGROUND

¶ 4 In May 2007, a grand jury indicted defendant on the following offenses: (1) unlawful possession with intent to deliver 900 grams or more of a substance containing cocaine

(count I) (720 ILCS 570/401(a)(2)(D) (West 2006)); (2) unlawful possession with intent to deliver more than 400 grams but less than 900 grams of a substance containing cocaine (count II) (720 ILCS 570/401(a)(2)(C) (West 2006)); (3) unlawful possession with intent to deliver more than 5,000 grams of a substance containing cannabis (count III) (720 ILCS 550/5(g) (West 2006)); (4) unlawful possession with intent to deliver 1 gram or more but less than 15 grams of a substance containing cocaine (count IV) (720 ILCS 570/401(c)(2) (West 2006)); (5) possession of a stolen firearm (count V) (720 ILCS 5/16-16(a) (West 2006)); and (6) unlawful possession with intent to deliver more than 10 grams but not more than 30 grams of a substance containing cannabis (count VI) (720 ILCS 550/5(c) (West 2006)). In May 2008, the circuit court commenced defendant's jury trial on the charges. As the parties are familiar with the facts of this case set forth in our two prior orders, we will not repeat them here. At the conclusion of the trial, the jury found defendant guilty of counts II, III, IV, and VI. In August 2008, the court sentenced defendant to concurrent prison terms of 40 years for count II, 25 years for count III, 15 years for count IV, and 3 years for count VI.

¶ 5 Defendant filed a direct appeal, arguing (1) the State failed to present sufficient evidence of his guilt on counts II and III, (2) he was deprived of due process and a fair trial because the State knew or should have known Hill gave false and misleading testimony, (3) the circuit court abused its discretion in denying his motion *in limine*, and (4) the court abused its discretion in sentencing him. This court affirmed defendant's convictions and sentences. *People v. Douglas*, No. 4-08-0697 (Apr. 6, 2010) (unpublished order under Supreme Court Rule 23).

¶ 6 In July 2011, defendant filed a *pro se* petition for postconviction relief under the Post-Conviction Hearing Act (Postconviction Act) (725 ILCS 5/122-1 *et seq.* (West 2010)). Among other claims, defendant alleged he was actually innocent of the drug charges and that

claim was support by newly discovered evidence, including affidavits of Marita Douglas, defendant's sister, and Anthony Douglas, defendant's brother, as well as other documents. The circuit court dismissed defendant's petition, finding it frivolous and patently without merit. Defendant appealed, asserting the court erred in summarily dismissing his postconviction petition because the affidavits of Anthony and Marita presented an arguable basis for a freestanding claim of actual innocence based on newly discovered evidence. This court affirmed the circuit court's dismissal, finding Anthony's and Marita's affidavits did not constitute newly discovered evidence. *People v. Douglas*, 2012 IL App (4th) 110726-U, ¶ 46.

¶ 7 On August 7, 2015, defendant filed *pro se* a motion for leave to file a successive postconviction petition, asserting he had newly discovered evidence that Hill had, in fact, been promised reduced charges in exchange for his testimony for the State. Defendant also filed the intended successive postconviction petition with his motion. Attached to the successive postconviction petition were two affidavits by Hill and transcripts. On August 24, 2015, the circuit court entered a written order, denying defendant's request to file a successive postconviction petition because he failed to show prejudice. Specifically, the circuit court noted this court had already found in a prior appeal that, even if Hill's testimony was false, it was not reasonably likely the false testimony could have impacted the jury's verdict.

¶ 8 On September 2, 2015, defendant filed a timely notice of appeal in sufficient compliance with Illinois Supreme Court Rule 606 (eff. Dec. 11, 2014). See Ill. S. Ct. R. 651(d) (eff. Feb. 6, 2013) (providing the supreme court rules governing criminal appeals apply to appeals in postconviction proceedings). Accordingly, this court has jurisdiction under Illinois Supreme Court Rule 651(a) (eff. Feb. 6, 2013).

¶ 9

II. ANALYSIS

¶ 10 On appeal, defendant contends the circuit court erred by denying his request to file a successive postconviction petition. The State asserts the dismissal is proper. “This court reviews *de novo* the denial of a defendant’s motion for leave to file a successive postconviction petition.” *People v. Merriweather*, 2017 IL App (4th) 150407, ¶ 25, 80 N.E.3d 127.

¶ 11 Section 122-1(f) of the Postconviction Act (725 ILCS 5/122-1(f) (West 2014)) provides the following:

“Only one petition may be filed by a petitioner under this Article without leave of the court. Leave of court may be granted only if a petitioner demonstrates cause for his or her failure to bring the claim in his or her initial post-conviction proceedings and prejudice results from that failure. For purposes of this subsection (f): (1) a prisoner shows cause by identifying an objective factor that impeded his or her ability to raise a specific claim during his or her initial post-conviction proceedings; and (2) a prisoner shows prejudice by demonstrating that the claim not raised during his or her initial post-conviction proceedings so infected the trial that the resulting conviction or sentence violated due process.”

Thus, for a defendant to obtain leave to file a successive postconviction petition, both prongs of the cause-and-prejudice test must be satisfied. *People v. Guerrero*, 2012 IL 112020, ¶ 15, 963 N.E.2d 909. In determining whether a defendant has established cause and prejudice, the circuit court may review the contents of the successive petition submitted. *Merriweather*, 2017 IL App (4th) 150407, ¶ 24, 80 N.E.3d 127. “ ‘Where a defendant fails to first satisfy the requirements under section 122-1(f), a reviewing court does not reach the merits or consider whether his

successive postconviction petition states the gist of a constitutional claim.’ ” *Merriweather*, 2017 IL App (4th) 150407, ¶ 24, 80 N.E.3d 127 (quoting *People v. Welch*, 392 Ill. App. 3d 948, 955, 912 N.E.2d 756, 762 (2009)).

¶ 12 In *People v. Green*, 2012 IL App (4th) 101034, ¶ 40, 970 N.E.2d 101, this court recognized that section 122-1(f) of the Postconviction Act contemplates the raising of a new claim, not a claim that has been previously raised. We noted the presentation of new, additional evidence to support a claim did not make that claim new. *Green*, 2012 IL App (4th) 101034, ¶ 40, 970 N.E.2d 101.

¶ 13 Here, in his direct appeal, defendant asserted violations of due process and the right to a fair trial based on Hill giving false testimony when he testified (1) he did not sell cocaine and did not know about the presence of cocaine in his home, despite the fact that Hill’s fingerprint was found on the cocaine in the hamper and (2) he received no benefits in exchange for his testimony. *Douglas*, No. 4-08-0697, slip order at 32. This court found that, even if Hill’s testimony about the cocaine was false, a reasonable likelihood did not exist that the false testimony could have affected the jury’s verdict. *Douglas*, No. 4-08-0697, slip order at 34. As to a benefit in exchange for Hill’s testimony, this court found defendant had failed to demonstrate a violation because nothing in the record besides the timing of Hill’s guilty plea established he made an agreement with the State. *Douglas*, No. 4-08-0697, slip order at 38.

¶ 14 In his first postconviction petition, defendant again alleged a due process violation based on the State allowing Hill to give false testimony and noted several examples. He stated the prosecutor misled the jury by failing to reveal his office had expectations of completing a deal with Hill to dismiss his Class X intent to deliver and cannabis charges. Defendant also expressly argued Hill lied when he stated he did not have an agreement with the State for his

testimony against defendant. In dismissing defendant's first postconviction petition, the circuit court noted the doctrine of *res judicata* barred defendant's argument Hill gave false testimony about the agreement. Defendant did not challenge that finding on appeal.

¶ 15 Thus, in this case, defendant has already raised the argument Hill lied on the stand about not having an agreement with the State. The additional fact that the State told him to lie does not change the basic claim the State knowingly allowed Hill's perjured testimony. Clearly, if the State had a deal with defendant and stood by his testimony that he did not have a deal, the State was a knowing participant in the perjury. Additionally, we note defendant does not even argue the additional fact the State told him to lie on the stand in his proposed successive petition. Thus, we agree with the State defendant has failed to raise a new claim.

¶ 16 Additionally, "[a]ll issues actually decided on direct appeal or in the original postconviction petition are barred by the doctrine of *res judicata*, and all issues that could have been raised in the original proceeding, or original postconviction petition, but were not, are waived." *People v. Anderson*, 375 Ill. App. 3d 121, 132, 872 N.E.2d 581, 592 (2007) (citing *People v. Blair*, 215 Ill. 2d 427, 443, 831 N.E.2d 604, 615 (2005)). Defendant has essentially argued the same issue he raised on direct appeal and in his first postconviction petition. He then fails to argue an exception to the doctrine of *res judicata*. Thus, it is also barred by the doctrine of *res judicata*.

¶ 17 Accordingly, we find the circuit court did not err by denying defendant's motion for leave to file a successive postconviction petition.

¶ 18 III. CONCLUSION

¶ 19 For the reasons stated, we affirm the Champaign County circuit court's judgment. As part of our judgment, we award the State its \$50 statutory assessment against defendant as

costs of this appeal.

¶ 20 Affirmed.