

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).

2018 IL App (4th) 150658-U

NO. 4-15-0658

IN THE APPELLATE COURT

OF ILLINOIS

FOURTH DISTRICT

FILED

January 9, 2018

Carla Bender

4th District Appellate

Court, IL

THE PEOPLE OF THE STATE OF ILLINOIS,)	Appeal from
Plaintiff-Appellee,)	Circuit Court of
v.)	Livingston County
JOHN W. ANDERSON,)	No. 10CF37
Defendant-Appellant.)	
)	Honorable
)	Jennifer H. Bauknecht,
)	Judge Presiding.

JUSTICE STEIGMANN delivered the judgment of the court.
Justices Holder White and DeArmond concurred in the judgment.

ORDER

¶ 1 *Held:* Appellate court grants appointed counsel’s motion to withdraw and affirms the trial court’s judgment because no meritorious issue could be raised on appeal.

¶ 2 This appeal comes to us from the office of the State Appellate Defender (OSAD) to withdraw as counsel because no meritorious issue could be raised on appeal. For the following reasons, we agree and affirm.

¶ 3 I. BACKGROUND

¶ 4 In February 2010, the State charged defendant, John W. Anderson, with attempt (escape) (720 ILCS 5/8-4(a), 31-6(a) (West 2008)). In September 2010, defendant pleaded guilty. After a November 2010 sentencing hearing, the trial court sentenced defendant to an extended-term sentence of six years in prison, to run consecutively to the sentence he was already serving. On appeal, we granted OSAD’s motion to withdraw and affirmed defendant’s conviction, concluding that no meritorious issue could be raised on appeal. *People v. Anderson*,

No. 4-10-0951 (Feb. 10, 2012) (unpublished summary order under Supreme Court Rule 23(c)(2)).

¶ 5 On September 13, 2012, defendant *pro se* filed a petition for postconviction relief under the Post-Conviction Hearing Act (Act) (725 ILCS 5/122-1 to 122-7 (West 2012)). In the petition, defendant argued that his appointed trial counsel provided ineffective assistance and operated under a conflict of interest. In November 2012, the trial court summarily dismissed defendant's postconviction petition, concluding that defendant failed to establish the gist of a constitutional violation. Defendant appealed, and OSAD was appointed to represent defendant on appeal. This court granted OSAD's motion to withdraw and affirmed the trial court's judgment, concluding that no meritorious issue could be raised on appeal. *People v. Anderson*, No. 4-12-1132 (Mar. 5, 2014) (unpublished summary order under Supreme Court Rule 23(c)(2)).

¶ 6 In May 2015, defendant *pro se* filed a motion for leave to file a successive petition for postconviction relief. In the successive petition, defendant argued he could establish cause and prejudice to raise eight separate claims of ineffective assistance of trial and appellate counsel. In July 2015, the trial court denied defendant leave to file a successive postconviction petition, concluding that defendant could not establish the cause and prejudice necessary to file a successive petition.

¶ 7 Defendant appealed, and OSAD was appointed as appellate counsel. OSAD has filed a motion requesting to withdraw from representing defendant because no meritorious issue can be raised on appeal. Defendant has not filed a response. We agree with OSAD that no meritorious issue can be raised on appeal. On its own motion, this court granted defendant until October 27, 2017, to file additional points and authorities. We therefore grant OSAD's motion to withdraw as counsel and affirm the trial court's judgment.

¶ 8

II. ANALYSIS

¶ 9

A. Successive Postconviction Petitions Under the Act

¶ 10 The Act (725 ILCS 5/122-1 to 122-7 (West 2012)) 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). Section 122-1(f) of the Act (725 ILCS 5/122-1(f) (West 2014)) provides that a petitioner may file only one postconviction petition under the Act, unless the petitioner obtains leave of court to file a successive petition. 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.” *Id.* A petitioner 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.” *Id.* A petitioner 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.” *Id.* Denial of a defendant’s motion for leave to file a successive postconviction petition is reviewed *de novo*. *People v. Wrice*, 2012 IL 111860, ¶ 50, 962 N.E.2d 934.

¶ 11

B. This Case

¶ 12 In this case, defendant raises several claims of ineffective assistance of trial and appellate counsel that he argues could not have been raised in his initial postconviction petition.

¶ 13 All of defendant’s claims fail because he has failed to establish cause for not bringing them in his initial postconviction petition. Defendant does not allege that he has discovered any new information that prevented him from raising these claims in his initial petition. The trial court therefore properly denied defendant’s request for leave to file a successive postconviction petition.

¶ 14 Because no meritorious issue can be raised on appeal, we grant OSAD's motion to withdraw as counsel and affirm the trial court's judgment.

¶ 15 III. CONCLUSION

¶ 16 For the foregoing reasons, we grant OSAD's motion to withdraw as counsel and affirm the trial court's judgment.

¶ 17 Affirmed.