

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) 160101-U

NO. 4-16-0101

IN THE APPELLATE COURT

OF ILLINOIS

FOURTH DISTRICT

FILED

December 28, 2018
Carla Bender
4th District Appellate
Court, IL

THE PEOPLE OF THE STATE OF ILLINOIS,)	Appeal from the
Plaintiff-Appellee,)	Circuit Court of
v.)	Adams County
ROBIN TONY ANGELINI)	No. 96CF282
Defendant-Appellant.)	
)	Honorable
)	Robert K. Adrian,
)	Judge Presiding.

PRESIDING JUSTICE HARRIS delivered the judgment of the court. Justices Steigmann and Cavanagh concurred in the judgment.

ORDER

¶ 1 *Held:* The appellate court granted the office of the State Appellate Defender’s motion to withdraw as appellate counsel and affirmed the trial court’s judgment.

¶ 2 This appeal comes to us on the motion of the office of the State Appellate Defender (OSAD) to withdraw as counsel on appeal because no meritorious issues can be raised in this case. Specifically, OSAD contends it can make no colorable argument the trial court erred in denying defendant’s motion for leave to file a successive postconviction petition because defendant’s claim that trial counsel rendered ineffective assistance by failing to object to any amendment of the information on speedy trial grounds is without arguable merit. We agree and affirm.

¶ 3 I. BACKGROUND

¶ 4 On August 2, 1996, defendant, Robin Tony Angelini, was charged by information with two counts of aggravated criminal sexual assault (720 ILCS 5/12-14(a)(2), (a)(3) (West 1994)). An arrest warrant was issued the same day. On August 5, 1996, defendant was arrested in Michigan. Defendant waived extradition on September 5, 1996, and the record indicates he was placed in custody in Adams County, Illinois, on September 11, 1996, where he remained until trial.

¶ 5 On December 9, 1996, the State amended the information to include one count of home invasion (720 ILCS 5/12-11 (West 1994)) and one count of criminal sexual assault (720 ILCS 5/12-13(a)(1) (West 1994)). On December 12, 1996, the State again amended the information to include two additional counts of aggravated criminal sexual assault (720 ILCS 5/12-14(a)(2), (a)(3) (West 1994)) and one additional count of criminal sexual assault (720 ILCS 5/12-13(a)(1) (West 1994)).

¶ 6 Defendant's jury trial commenced on December 16, 1996. The jury returned guilty verdicts on all seven counts on December 19, 1996. The trial court sentenced defendant on two counts of aggravated criminal sexual assault and one count of home invasion to three consecutive terms of 60 years' imprisonment for a total of 180 years. This court affirmed defendant's convictions on direct appeal. *People v. Angelini*, No. 4-97-0089 (1998) (unpublished order under Illinois Supreme Court Rule 23).

¶ 7 In August 2001, defendant *pro se* filed a petition for relief from judgment pursuant to section 2-1401 of the Code of Civil Procedure (735 ILCS 5/2-1401 (West 2000)). Defendant argued his sentences were void under *Apprendi v. New Jersey*, 530 U.S. 466 (2000). The trial court dismissed defendant's petition. On appeal, this court reduced defendant's total

sentence to 120 years and otherwise affirmed the trial court's judgment. *People v. Angelini*, No. 4-01-0955 (2003) (unpublished order under Illinois Supreme Court Rule 23).

¶ 8 In September 2004, defendant *pro se* filed a postconviction petition, in which he alleged ineffective assistance of counsel. The trial court summarily dismissed defendant's postconviction petition as frivolous and patently without merit. This court affirmed the dismissal. *People v. Angelini*, No. 4-05-0018 (2006) (unpublished order under Illinois Supreme Court Rule 23).

¶ 9 On November 2, 2015, defendant *pro se* filed the instant postconviction petition, along with a motion for leave to file a successive postconviction petition. On January 25, 2016, the trial court denied defendant's motion for leave to file a successive postconviction petition. Although the court found the handwritten petition largely illegible, it determined defendant was alleging that trial counsel was ineffective for failing to file a motion to dismiss the case based on an alleged violation of defendant's right to a speedy trial. The court found that defendant was unable to show any objective factor that prevented him from raising the allegation in his initial postconviction petition. The court further found no basis existed to conclude that a motion to dismiss on speedy trial grounds would have been successful.

¶ 10 Defendant appealed the trial court's denial of his motion for leave to file a successive postconviction petition. OSAD moved to withdraw as appellate counsel, claiming the appeal presents no meritorious issues. This court granted defendant leave to file a response to OSAD's motion, and he did so. We now grant OSAD's motion and affirm the trial court's judgment.

¶ 11 II. ANALYSIS

¶ 12 OSAD contends defendant’s claim that the trial court erred in denying his motion for leave to file a successive postconviction petition is without arguable merit. We agree.

¶ 13 The Post-Conviction Hearing Act (Act) (725 ILCS 5/122-1 *et seq.* (West 2014)) allows a defendant to challenge a conviction or sentence for violations of constitutional rights. *People v. Scott*, 194 Ill. 2d 268, 273 (2000). A proceeding under the Act is a collateral challenge to the conviction or sentence. *People v. Wrice*, 2012 IL 111860, ¶ 47. As such, the common law doctrine of forfeiture limits postconviction claims “to constitutional matters which have not been, and could not have been, previously adjudicated.” *People v. Winsett*, 153 Ill. 2d 335, 346 (1992). “[I]ssues that could have been raised in the earlier proceedings, but were not, will ordinarily be deemed [forfeited].” *Scott*, 194 Ill. 2d at 274. However, as discussed below, in the context of a successive postconviction petition, “the procedural bar of [forfeiture] is not merely a principle of judicial administration; it is an express requirement of the statute.” *People v. Pitsonbarger*, 205 Ill. 2d 444, 458 (2002).

¶ 14 The Act generally permits the filing of only one postconviction petition, and a defendant is prohibited from filing a successive postconviction petition without leave of court. 725 ILCS 5/122-1(f) (West 2014). This statutory bar is relaxed when a defendant raises a due process claim of actual innocence or satisfies the “cause-and-prejudice” test (Internal quotation marks omitted.). *People v. Holman*, 2017 IL 120655, ¶¶ 25-26. A defendant 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.” 725 ILCS 5/122-1(f) (West 2014). A defendant 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.* We review *de novo* the denial of a defendant’s motion for leave to file a successive postconviction petition. *People v. Crenshaw*, 2015 IL App (4th) 131035, ¶ 38.

¶ 15 As an initial matter, we find defendant has forfeited his claim that trial counsel was ineffective for not challenging the amended charges on speedy trial grounds. As noted, “issues that could have been raised in the earlier proceedings, but were not, will ordinarily be deemed [forfeited].” *Scott*, 194 Ill. 2d at 274. Defendant previously filed a direct appeal following his conviction in addition to two collateral proceedings, any of which could have served as a vehicle for review of his speedy trial claim. Furthermore, even if we were to excuse defendant’s forfeiture, he has failed to satisfy the prejudice prong of the “cause-and-prejudice” analysis (we note he presents no claim of actual innocence), and we may dispose of his appeal on this basis as well. See *People v. Smith*, 2014 IL 115946, ¶ 37 (“Having concluded that defendant cannot show prejudice, we need not address defendant’s claim of cause.”).

¶ 16 Section 103-5 of the Code of Criminal Procedure of 1963 (725 ILCS 5/103-5(a) (West 1994)) mandates every person in custody in Illinois for an alleged offense be tried within 120 days from the date that person was taken into custody. The 120-day period applies both to charges that have been filed and charges that have not yet been filed but are subject to mandatory joinder with the originally filed charges because they are based on the same act. See *People v. Williams*, 204 Ill. 2d 191, 198 (2003). Thus, “a defendant held in custody and charged with a single offense must be tried within 120 days not only for that offense but also for any other offenses that could be charged based on the same underlying act.” *People v. Dalton*, 2017 IL App (3d) 150213, ¶ 21. The case law is clear, however, that the 120-day period commences when a defendant is placed in custody in Illinois, not when he is placed in custody in another state. See *People v. Hayes*, 23 Ill. 2d 527, 529 (1962) (stating the 120-day speedy trial period

commenced when the defendant was confined in Illinois, not upon the defendant's earlier arrest in Mississippi).

¶ 17 Here, defendant was arrested in Michigan on August 5, 1996. Defendant waived extradition and was returned to Illinois on September 11, 1996, where he remained in custody until his trial. Accordingly, the 120-day speedy trial period commenced on September 11, 1996, not August 5, 1996. The State amended the information on December 9, 1996, and on December 12, 1996, which was still within the speedy trial period. Trial began on December 16, 1996, and the jury returned guilty verdicts on all seven counts on December 19, 1996. The counts on which defendant was convicted were all filed before the expiration of the speedy trial period. Therefore, we agree with OSAD that no argument can be made the trial court erred in denying defendant's motion for leave to file a successive postconviction petition because his claim trial counsel was ineffective for failing to object to amendment of the information on speedy trial grounds is without arguable merit.

¶ 18 III. CONCLUSION

¶ 19 For the reasons stated, we grant OSAD's motion to withdraw as appellate counsel and affirm the trial court's judgment denying defendant's motion for leave to file a successive postconviction petition.

¶ 20 Affirmed.