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2019 IL App (3d) 180488-U

Order filed June 12, 2019

IN THE
APPELLATE COURT OF ILLINOIS
THIRD DISTRICT

2019

THE PEOPLE OF THE STATE OF ILLINOIS,)	Appeal from the Circuit Court of the 21st Judicial Circuit, Kankakee County, Illinois,
Plaintiff-Appellee,)	
v.)	Appeal No. 3-18-0488
TERRELL D. STANBACK,)	Circuit No. 07-CF-456
Defendant-Appellant.)	Honorable Kathryn S. Elliott, Judge, Presiding.

JUSTICE HOLDRIDGE delivered the judgment of the court.
Presiding Justice Schmidt and Justice Lytton concurred in the judgment.

ORDER

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

¶ 2 The defendant, Terrell D. Stanback, argues that his motion for leave to file a successive postconviction petition should not have been denied where he met the cause and prejudice standard.

¶ 3 I. BACKGROUND

¶ 4 In 2009, the defendant entered a blind plea to home invasion (720 ILCS 5/12-11(a)(1) (West 2006)) and aggravated discharge of a firearm (*id.* § 24-1.2(a)(3)), in exchange for the dismissal of six other counts. At sentencing¹ three police officers each testified about a separate shooting, one was the discharge of a firearm the defendant was charged with in this case and two others were shootings he was not charged with, but identified as having committed. In mitigation, the defendant submitted three letters written by Latoria James, Gail Stanback, and Martell Stanback, as well as a report from Dr. Leonard Porter. The defendant offered a statement in allocution, stating that he never physically hurt anyone and knew his actions were wrong, apologizing to the owners of the house and the police, and remarking that he had grown personally and had taken steps to change. In aggravation, the State said that the defendant was on parole at the time he committed the offense. The State asked for 30 years' imprisonment for each offense.

¶ 5 In reaching its decision, the court stated that it read the letters and report and discussed the presentence investigation report (PSI) at length. The court noted that the defendant had been violent since he was young and had "a terrible, terrible record of violence." He had been to the Juvenile Department of Corrections [DOC] twice. He was abused as a child and taken into protective custody. He quit school in the 9th grade. He used drugs and alcohol at a young age and was unsuccessfully discharged multiple times from rehabilitation. The court noted, "Riverside report diagnosed you with bipolar disorder. You didn't want to take your medication." The court further stated,

¹The only portion of the record of the original proceedings included on appeal is the transcript from the sentencing hearing. The defendant has not submitted any of the documents provided to the sentencing court, including the letters or report offered in mitigation, the presentence investigation report (PSI), or the record of the original plea proceedings.

“I’ve read all the letters from your family, and I realize they’re—they’re your siblings. One is your twin. They believe you can be rehabilitated. So maybe you will rehabilitate yourself in prison, based on their belief. ***

Some of these letters talk about you being a role model. I can’t image who you could possibly be a role model for. ***

Again, I guess—*** everybody seems to think you were smart and you could have done more with your life.”

The court stated there was not much chance of rehabilitation. The court found it aggravated the situation that the defendant went into a house where children were present with a loaded gun and ran from the police. It stated that the defendant’s actions caused or threatened serious harm and he had a previous history of criminal activity. The court noted that the defendant faced 21 to 45 years’ imprisonment on the home invasion and 10 to 45 years’ imprisonment on the aggravated discharge of a firearm. The court sentenced the defendant to 26 years, to be served at 50 percent, on the home invasion, and 24 years, to be served at 85 percent, on the aggravated discharge of a firearm. The two sentences would be served concurrently.

¶ 6 The defendant filed a direct appeal, arguing that the court abused its discretion in allowing the State to introduce evidence at sentencing that the defendant had been involved in two other shootings and that his DNA fee should be vacated. *People v. Stanback*, 2011 IL App (3d) 090905-U, ¶ 2. This court vacated the DNA fee, but otherwise affirmed. *Id.*

¶ 7 According to the defendant, he filed a *pro se* postconviction petition in June 2011, which was summarily denied. The postconviction petition is not included in the record on appeal.

¶ 8 In 2017, the defendant, while represented by counsel, filed a motion for leave to file a successive postconviction petition. The motion alleged that trial counsel was ineffective for

failing to (1) call mitigation witnesses at sentencing, (2) investigate and present evidence about the defendant's medical and psychological history, (3) rebut the State's aggravation evidence of the defendant's violent crimes, and (4) contact the defendant's family to discuss giving testimony. The motion stated,

“Defendant, an unsophisticated [*pro se*] petitioner, essentially rehashed arguments already made on direct appeal in his first post-conviction relief petition, and as a result was given short shrift by this Court. His arguments regarding the ineffective assistance he received at sentencing have never been presented due to his lack of knowledge.”

Moreover, the defendant alleged that, if trial counsel had presented mitigating evidence, there is a reasonable probability that the result of the sentencing hearing would have been different. The motion further stated, “Defendant desires to supplement this Motion with affidavits that will demonstrate the availability of mitigation witnesses, which will be procured after defense counsel is allowed to review the [PSI], which currently is sealed within the court file.” The only thing attached to the motion was a transcript of the sentencing hearing. The defendant then filed a motion to allow counsel's review of the PSI. The court granted counsel access to the PSI. However, counsel only filed an affidavit of the defendant, which stated that he was diagnosed with bipolar disorder and had been hospitalized for behavioral problems. Trial counsel never asked him about this, they never discussed it, and it was never explained at sentencing. The defendant stated, “Without evidence to explain the psychological and medical bases for my behavior, I appeared at sentencing to be violent and uncontrollable.”

¶ 9 The State filed a motion to dismiss, but the court struck the motion under *People v. Bailey*, 2017 IL 121450. The court issued a written decision denying the defendant’s motion to file a successive postconviction petition, which stated,

“The Court may grant such leave only if the petitioner can satisfy the cause-and-prejudice test. The Defendant fails to do so. All of his claims could have been raised in his original petition. Further, the Defendant claims that trial counsel did not call any mitigation witnesses or contact his family to testify on his behalf. This Court has reviewed the transcript of the sentencing and finds that the Court read letters from family members—siblings which included his twin on behalf of the Defendant. As to his claim that the Court did not take into account of his medical and psychological issues, this Court did take that into account. [In] *** the sentencing transcript the Court stated ‘Riverside report diagnosed you with bipolar disorder. You didn’t want to take your medication. You had verbal altercations with the staff. You had physical altercations. You were aggressive.’ Further, the Court took into account the report from Dr. Porter with a diagnosis of adolescent adjustment and being non-responsive.

As to the Defendant’s claim of substantial aggravating evidence of other crimes, [in] *** the sentencing transcript the Court was very clear that although there had been a lot of evidence of other incidents that this Court believed that the PSI showed that there was not much chance of rehabilitation. The Defendant was sentenced twice to the Juvenile DOC and was unsuccessful. The Defendant was kicked out of Arrowhead and Riverside Resolve because of assaulting behavior.

This Court sentenced the Defendant based on him being a danger to society as he has been a bully, mean and violent person.”

¶ 10

II. ANALYSIS

¶ 11

On appeal, the defendant argues that the court erred in denying the motion for leave to file a successive postconviction petition because he satisfied the cause and prejudice test.

¶ 12

The Post-Conviction Hearing Act (725 ILCS 5/122-1 *et seq.* (West 2014)) contemplates the filing of only one postconviction petition. *People v. Davis*, 2014 IL 115595, ¶ 14. However, a defendant may obtain leave of court to file a successive postconviction petition if he or she establishes cause and prejudice for the failure to raise the claim earlier. *People v. Pitsonbarger*, 205 Ill. 2d 444, 459 (2002). “Cause” is defined as an “objective factor external to the defense that impeded counsel’s efforts to raise the claim in an earlier proceeding” and “prejudice” exists where the petitioner can show that the alleged constitutional error so infected his trial that the resulting conviction violated due process. *Davis*, 2014 IL 115595, ¶ 14. A defendant not only has the burden to obtain leave of court, but also “must submit enough in the way of documentation to allow a circuit court to make that determination.” *People v. Tidwell*, 236 Ill. 2d 150, 161 (2010).

¶ 13

At the outset, we note that the record on appeal does not include the defendant’s original postconviction petition. We have no way of knowing that the defendant did not, in fact, raise these issues in his previous postconviction petition. See *People v. Guerrero*, 2012 IL 112020, ¶ 17 (“[A] ruling on an initial postconviction petition has *res judicata* effect with regard to all claims that were raised or could have been raised in the initial petition.”). “Any doubts arising from the incompleteness of the record will be construed against the appellant and in favor of the judgment rendered in the lower court.” *People v. Henderson*, 2011 IL App (1st) 090923, ¶ 45. Therefore, we could conclude that the defendant’s claims are barred by *res judicata*.

¶ 14 Nonetheless, the defendant believes he has established “cause” due to the fact that his “lack of legal knowledge and sophistication prevented him from raising his grievances in his initial petition.” However, a defendant’s “mere failure to recognize his claim cannot be an objective factor external to the defense that prevents one from bringing the claim in defendant’s initial postconviction petition.” *People v. Jellis*, 2016 IL App (3d) 130779, ¶ 26. See also *People v. Jones*, 2013 IL App (1st) 113263, ¶ 25; see also *People v. Evans*, 2013 IL 113471, ¶ 13 (A defendant’s “subjective ignorance of [the law] is not ‘an objective factor that impeded’ his ability to raise the *** claim sooner.”). Because the claims contained in the defendant’s successive postconviction petition could have been raised in his initial petition, they are barred.

¶ 15 Even if the defendant was able to show cause for his failure to raise his claims earlier, his claims would still be barred due to his failure to establish prejudice. To show “prejudice,” a petitioner must show that he was “denied consideration of an error that so infected the entire trial that the resulting conviction or sentence violates due process.” *Pitsonbarger*, 205 Ill. 2d at 464. The defendant alleges that trial counsel was ineffective for failing to have witnesses testify or present expert testimony and reports on his medical and psychological issues. First, trial counsel presented three letters from the defendant’s family. The letters are not in the record so we do not know the content. However, based on the court’s discussion of the letters, witness testimony would not have provided any further mitigation than the letters provided. Moreover, the defendant did not attach any affidavits to show that his family was not asked to testify or would have testified if they had been asked. Second, a report from Dr. Porter and the PSI discussed the defendant’s psychological and medical history. Again, the defendant has not produced these documents in the record on appeal. The defendant has not provided us with anything to show that there was readily available evidence in mitigation that was not raised at sentencing and should

have been. “ ‘Neither mistakes in strategy nor the fact that another attorney with the benefit of hindsight would have proceeded differently is sufficient to establish ineffective assistance of counsel.’ ” *People v. Hotwagner*, 2015 IL App (5th) 130525, ¶ 35 (quoting *People v. Dobbs*, 353 Ill. App. 3d 817, 827 (2004)). Because we find that the defendant did not meet the cause and prejudice test, the court did not err in denying the motion for leave to file a successive postconviction petition.

¶ 16

III. CONCLUSION

¶ 17

The judgment of the circuit court of Kankakee County is affirmed.

¶ 18

Affirmed.