

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

October 16, 2019

Carla Bender
4th District Appellate
Court, IL

2019 IL App (4th) 170500-U

NO. 4-17-0500

IN THE APPELLATE COURT

OF ILLINOIS

FOURTH DISTRICT

THE PEOPLE OF THE STATE OF ILLINOIS,)	Appeal from the
Plaintiff-Appellee,)	Circuit Court of
v.)	McLean County
GUADALUPE MARTINEZ,)	No. 10CF87
Defendant-Appellant.)	
)	Honorable
)	Scott D. Drazewski,
)	Judge Presiding.

JUSTICE KNECHT delivered the judgment of the court.
Presiding Justice Holder White and Justice Steigmann 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 as no meritorious issue could be raised on appeal.

¶ 2 Defendant, Guadalupe Martinez, appeals from the trial court’s order denying him leave to file a successive postconviction petition. On appeal, the Office of the State Appellate Defender (OSAD) moves to withdraw as appellate counsel on the ground no meritorious issue can be raised. Defendant has not filed a response to OSAD’s motion. We grant OSAD’s motion and affirm.

¶ 3 I. BACKGROUND

¶ 4 In April 2011, a jury found defendant guilty of unlawful delivery of less than 15

grams of a substance containing cocaine (720 ILCS 570/401(c)(2) (West 2008)), and, in June 2011, the trial court sentenced him to 25 years' imprisonment. Defendant appealed, arguing the State failed to prove him guilty beyond a reasonable doubt, and this court affirmed the trial court's judgment. *People v. Martinez*, 2012 IL App (4th) 110544-U, ¶ 3.

¶ 5 In June 2014, defendant filed a *pro se* postconviction petition, which advanced to the second stage of postconviction proceedings. Defendant, through appointed counsel, filed an amended postconviction petition, and the State filed a motion to dismiss. Following an April 2015 hearing, the trial court granted the State's motion to dismiss. Defendant appealed, arguing his petition made a substantial showing his trial counsel provided ineffective assistance, and this court affirmed the trial court's judgment. *People v. Martinez*, 2016 IL App (4th) 150365-U, ¶ 2.

¶ 6 In April 2017, defendant filed a *pro se* motion for leave to file a successive postconviction petition. The successive postconviction petition, which was attached to the motion for leave to file, alleged (1) postconviction counsel provided "ineffective" assistance and (2) the trial court failed to conduct an inquiry in accordance with *People v. Krankel*, 102 Ill. 2d 181, 464 N.E.2d 1045 (1984), to determine whether he was entitled to the appointment of new postconviction counsel after he made a reference in court to his postconviction counsel's ineffectiveness. In June 2017, the trial court entered a written order denying defendant leave to file his successive postconviction petition.

¶ 7 This appeal followed.

¶ 8 II. ANALYSIS

¶ 9 On appeal, OSAD asserts no colorable argument can be made to suggest the trial court improperly denied defendant leave to file his successive postconviction petition.

¶ 10 Section 122-1(a)(1) of the Post-Conviction Hearing Act (Act) (725 ILCS 5/122-1(a)(1) (West 2016)) provides: “Any person imprisoned in the penitentiary may institute a proceeding under this Article if the person asserts that *** in the proceedings which resulted in his or her conviction there was a substantial denial of his or her rights under the Constitution of the United States or of the State of Illinois or both.” “In other words, for a claim to be cognizable under the Act, the claim must (1) allege a substantial denial of the defendant’s constitutional rights (2) that occurred during the proceedings that resulted in the defendant’s conviction.” *People v. Dalton*, 2017 IL App (4th) 141088, ¶ 29, 71 N.E.3d 820.

¶ 11 Defendant’s claims in his successive postconviction petition do not meet the threshold requirements of section 122-1(a)(1). First, defendant’s claims are not of a constitutional dimension as the right to the assistance of counsel in a postconviction proceeding is wholly statutory. See *People v. Suarez*, 224 Ill. 2d 37, 42, 862 N.E.2d 977, 979 (2007) (“There is no constitutional right to the assistance of counsel in postconviction proceedings; the right to counsel is wholly statutory ***.”); see also *People v. Custer*, 2019 IL 123339, ¶ 46 (declining “to extend the posttrial motion procedures *** created in *Krankel* to allegations of unreasonable assistance by postconviction counsel”). Second, defendant’s claims relate to alleged errors that occurred during the postconviction proceedings, not the proceedings that led to his conviction. See *Dalton*, 2017 IL App (4th) 141088, ¶ 30 (finding the defendant’s claim in his successive postconviction petition suggesting postconviction counsel failed to comply with Illinois Supreme Court Rule

651(c) (eff. Dec. 1, 1984) did not meet the threshold requirements of section 122-1(a)(1) because it was not of a constitutional dimension and did not relate to the proceedings that led to the defendant's conviction).

¶ 12 Because defendant's claims in his successive postconviction petition do not meet the threshold requirements of section 122-1(a)(1), we agree with OSAD no colorable argument can be made to suggest the trial court improperly denied defendant's motion for leave to file his successive postconviction petition.

¶ 13

III. CONCLUSION

¶ 14

We grant OSAD's motion to withdraw as counsel and affirm.

¶ 15

Affirmed.