

NOTICE

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2019 IL App (4th) 170552-U

NO. 4-17-0552

IN THE APPELLATE COURT

OF ILLINOIS

FOURTH DISTRICT

FILED
July 23, 2019
Carla Bender
4th District Appellate
Court, IL

THE PEOPLE OF THE STATE OF ILLINOIS,)	Appeal from the
Plaintiff-Appellee,)	Circuit Court of
v.)	Macon County
RYAN TYUS,)	No. 07CF1144
Defendant-Appellant.)	
)	The Honorable
)	Jeffrey S. Geisler,
)	Judge Presiding.

JUSTICE STEIGMANN delivered the judgment of the court.

Justices DeArmond and Harris concurred in the judgment.

ORDER

¶ 1 *Held:* The appellate court reversed the trial court’s dismissal of defendant’s successive postconviction petition.

¶ 2 Defendant, Ryan Tyus, was convicted of multiple offenses in 2009 and 2010. In October 2012, defendant *pro se* filed a postconviction petition in which he argued that his attorney was ineffective because he conditioned his willingness to engage in further plea negotiations upon defendant’s ability to pay an additional fee. In August 2015, the trial court denied this petition after conducting an evidentiary hearing.

¶ 3 In February 2017, defendant *pro se* filed a petition for leave to file a successive postconviction petition. Based upon information arising from the State’s closing arguments at the evidentiary hearing, defendant argued that his attorney failed to communicate a plea offer to him. In July 2017, the trial court denied the petition.

¶ 4 Defendant appeals, arguing that the trial court erred by denying his request to file a successive postconviction petition. We agree.

¶ 5 I. BACKGROUND

¶ 6 A. Defendant's Drug Trafficking and Conspiracy Conviction

¶ 7 In August 2007, the State charged defendant with (1) controlled substance trafficking with a prior delivery-of-controlled-substance conviction and (2) criminal drug conspiracy with a prior delivery-of-controlled-substance conviction. 720 ILCS 570/401.1, 405.1 (West 2006). In August 2009, after plea negotiations between the State and defendant were unsuccessful, a jury convicted defendant of both charges. The trial court sentenced defendant to 25 years in prison. In October 2011, this court affirmed defendant's conviction and sentence on direct appeal. *People v. Tyus*, 2011 IL App (4th) 100168, ¶ 90, 960 N.E.2d 624.

¶ 8 B. Defendant's Aggravated Fleeing Conviction

¶ 9 In July 2009, while defendant was out on bond in the above-mentioned case, the State charged defendant with aggravated fleeing or attempting to elude a peace officer. 625 ILCS 5/11-204.1 (a)(4) (West 2008). In March 2010, defendant pleaded guilty to this offense. In its factual basis, the State asserted that (1) police officers observed a vehicle commit a traffic violation; (2) defendant was the driver of the vehicle; (3) after the vehicle was stopped by the police, defendant refused to exit the vehicle and drove away; (4) officers pursued defendant's vehicle with their emergency lights and sirens activated; and (5) once defendant's vehicle stopped again, the officers wrestled defendant to the ground and placed him under arrest. The trial court accepted defendant's guilty plea and sentenced him to two years in prison. Because defendant committed this offense while he was on bond on a felony charge, this sentence was required to be served consecutive to his other convictions. 730 ILCS 5/5-8-4(d)(8) (West 2008).

¶ 10 Defendant filed a direct appeal that he later dismissed on his own motion. *People v. Tyus*, No. 4-13-0495 (July 19, 2013); see also *People v. Tyus*, 2016 IL App (4th) 140706-U, ¶ 36 (affirming the trial court’s summary dismissal of a postconviction petition arising from defendant’s conviction for aggravated fleeing).

¶ 11 C. The Initial Postconviction Petition

¶ 12 In October 2012, regarding his convictions arising from drug trafficking, defendant *pro se* filed a postconviction petition. In pertinent part, defendant alleged that Jeffrey Justice, his privately retained trial counsel, conditioned his willingness to engage in further plea negotiations upon defendant’s ability to pay an additional fee. Specifically, defendant argued as follows:

“Defense counsel was ineffective when he told [defendant] that if he did not accept [the State’s] offer of (9) years and [if he lost] the motion to suppress[,] [t]he State would be asking for (9) to (12) years.

[The State’s] next offer was (18) years. [When defendant] ask[ed] his counsel, ‘about the (9) years??’ Counsel’s response was to pay him his money and he would get [defendant] the (9) years that the People first offered.

Since [defendant] was in custody, [defendant] had no way to finish paying counsel at the moment. Counsel did not investigate [defendant’s] case any further.”

¶ 13 In December 2012, the trial court summarily dismissed the petition as frivolous and patently without merit. In August 2014, after concluding that defendant stated the gist of a constitutional claim, this court reversed the trial court’s summary dismissal of defendant’s postconviction petition and remanded for further proceedings. *People v. Tyus*, 2014 IL App (4th) 130139-U, ¶ 37.

¶ 14 In March 2015, postconviction counsel filed an amended petition for postconviction relief. In pertinent part, postconviction counsel reiterated defendant's claims and argued that trial counsel was ineffective. Ultimately, the trial court advanced defendant's claims for a third-stage evidentiary hearing.

¶ 15 D. The Evidentiary Hearing

¶ 16 In August 2015, the trial court conducted an evidentiary hearing on defendant's postconviction petition. Regarding counsel's performance, defendant testified as follows during direct examination:

"Q. All right. And—uh—there had been some discussions with you and Mr. Justice *** about an offer that the State had made?

A. Yes, sir.

Q. And what was that offer?

A. That was nine years *** if I didn't hear my motion to suppress.

Q. All right. And once you heard that motion to suppress evidence, was it your understanding that [the] nine-year offer was off the table?

A. He said it would be in between. If I lost the motion, it would be in between nine and twelve years.

Q. That's what Mr. Justice told you?

A. Yes.

Q. All right. And then after the motion, did you subsequently talk to Mr. Justice about other offers from the State?

A. When I got incarcerated [for aggravated fleeing]. I didn't talk to Mr. Justice until I got incarcerated again, and then, he brought me an offer of eighteen

years, and I asked him about the nine—in between the nine and twelve years. He said, ‘give me my money, and I’ll get the—uh—the nine years offered to you at first.’

Q. All right. Well, what I’m trying to get at is that—so, you’re saying Mr. Justice told you that if you paid him additional funds or paid more money to him, he would—uh—go back to get the nine?

A. Correct.

Q. All right. Now, what happened then? What was the conversation?

A. Uh—I was unable to pay him.”

¶ 17 Justice testified and denied that he conditioned his work on the payment of an additional fee. He stated that he informed defendant that if he withdrew the motion to suppress, the State was offering a plea deal of nine years in prison. Justice stated that defendant rejected this offer. Justice testified that he had “no recollection” of a deal of 9 to 12 years if defendant lost his motion to suppress evidence. Justice noted that after the motion to suppress was denied, the State offered a plea deal of 18 years in prison in exchange for pleading guilty to drug trafficking. Justice stated that defendant rejected this offer twice: once before he was arrested for aggravated fleeing and once more after he was arrested for aggravated fleeing. Justice did not mention that this offer of 18 years *might have* included dismissal of the aggravated fleeing charge.

¶ 18 During closing argument, the prosecutor—who was also the prosecutor at defendant’s trial—argued as follows:

“I will say as a—as an officer of the Court, it is my recollection that there was an offer before trial *** for 18 years, dismiss the aggravated fleeing and eluding, and that was part of—we didn’t have any documentation of that, but that’s also my

recollection of what the negotiations were ***.”

¶ 19 The trial court dismissed defendant’s petition. The court found Justice’s testimony to be credible and stated that “I just don’t believe that this alleged extortion ever took place.” This court affirmed the trial court’s judgment. *People v. Tyus*, 2016 IL App (4th) 150687-U, ¶ 49.

¶ 20 E. The Successive Postconviction Petition

¶ 21 In February 2017, defendant *pro se* filed a successive postconviction petition and a petition for leave to file a successive postconviction petition. In pertinent part, defendant argued that Justice failed to inform him of a plea offer. Specifically, defendant argued that Justice failed to inform him that the State was offering 18 years in prison for drug trafficking *and* dismissal of the aggravated fleeing and eluding charge. Defendant argued that he was prejudiced because he would have accepted this offer. Defendant stated that he first became aware of this offer from the prosecutor’s closing arguments during the third-stage evidentiary hearing. In July 2017, the trial court entered a written order denying the petition for leave to file a successive postconviction petition.

¶ 22 This appeal followed.

¶ 23 II. ANALYSIS

¶ 24 Defendant appeals, arguing that the trial court erred by denying his request to file a successive postconviction petition. We agree.

¶ 25 A. The Applicable Law

¶ 26 The Post-Conviction Hearing Act (Act) provides a criminal defendant the means to redress substantial violations of his constitutional rights that occurred in his original trial or sentencing. *People v. Crenshaw*, 2015 IL App (4th) 131035, ¶ 23, 38 N.E.3d 1256; 725 ILCS

5/122-1 (West 2016). However, the Act “generally contemplates the filing of only one postconviction petition.” *People v. Ortiz*, 235 Ill. 2d 319, 328, 919 N.E.2d 941, 947 (2009). “A successive postconviction petition may only be filed if leave of court is granted.” *Crenshaw*, 2015 IL App (4th) 131035, ¶ 28; see also 725 ILCS 5/122-1(f), 122-3 (West 2016). In pertinent part, the Act provides as follows:

“Except [as otherwise provided], only one petition may be filed by a petitioner under this [Act] 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.” 725 ILCS 5/122-1(f) (West 2016).

¶ 27 “Pursuant to the cause-and-prejudice test, the petitioner must show good cause for failing to raise the claimed errors in a prior proceeding and actual prejudice resulting from the claimed errors.” *People v. Nicholas*, 2013 IL App (1st) 103202, ¶ 33, 987 N.E.2d 482. “Cause is defined as any objective factor, external to the defense, which impeded the petitioner’s ability to raise a specific claim at the initial post-conviction proceeding.” (Internal quotation marks omitted.) *Id.* “Prejudice is defined as an error so infectious to the proceeding that the resulting conviction violates due process.” (Internal quotation marks omitted.) *Id.*

¶ 28 “Defendants have a Sixth Amendment right to counsel, a right that extends to the plea-bargaining process.” *Lafler v. Cooper*, 566 U.S. 156, 162 (2012). As a general rule, defense counsel has an obligation to communicate formal offers from the State to the accused. *Missouri v. Frye*, 566 U.S. 134, 145 (2012). “As such, an attorney’s failure to disclose a plea offer to the defendant may give rise to a constitutional claim, regardless of whether the defendant subsequently received a fair trial.” *People v. Trujillo*, 2012 IL App (1st) 103212, ¶ 9, 972 N.E.2d 184.

¶ 29 “[A] defendant’s *pro se* motion for leave to file a successive postconviction petition will meet the section 122-1(f) cause and prejudice requirement if the motion adequately alleges facts demonstrating cause and prejudice.” *People v. Smith*, 2014 IL 115946, ¶ 34, 21 N.E.3d 1172. Alternatively, “leave of court to file a successive postconviction petition should be denied when it is clear, from a review of the successive petition and the documentation submitted by the petitioner, that the claims alleged by the petitioner fail as a matter of law or where the successive petition with supporting documentation is insufficient to justify further proceedings.” *Id.* ¶ 35. “This court reviews *de novo* the denial of a defendant’s motion for leave to file a successive postconviction petition.” *Crenshaw*, 2015 IL App (4th) 131035, ¶ 38.

¶ 30 B. This Case

¶ 31 In defendant’s first postconviction petition, he alleged that Justice—his trial attorney—conditioned his willingness to engage in further plea negotiations upon defendant’s ability to pay an additional fee. During an evidentiary hearing on this petition, Justice denied these accusations. Justice also testified that the State offered a plea deal of 18 years in prison in exchange for pleading guilty to drug trafficking. However, he did not mention that this offer of 18 years *might have* included dismissal of the aggravated fleeing charge. Nonetheless, during the State’s closing arguments, the prosecutor stated that “there was an offer before trial *** for 18 years, dismiss the aggravated fleeing and eluding, and that was part of—we didn’t have any documentation of that, but that’s also my recollection of what the negotiations were ***.” Based upon the prosecutor’s statements, defendant filed a successive postconviction petition in which he argued that his attorney failed to communicate this offer to him. The trial court dismissed the successive postconviction petition.

¶ 32 Based on the ambiguous record and the new information arising from the State’s

closing argument, we conclude that defendant has adequately alleged facts demonstrating cause. See *Smith*, 2014 IL 115946, ¶ 34. Likewise, due to the consecutive nature of his sentences, we conclude that defendant has adequately alleged facts demonstrating prejudice. See *id.* Accordingly, the trial court erred by denying defendant's leave to file a successive postconviction petition. *Crenshaw*, 2015 IL App (4th) 131035, ¶ 39.

¶ 33 In so concluding, we take no position regarding what merit, if any, defendant's successive postconviction petition may have. That is a matter to be determined through further proceedings under the Act.

¶ 34 III. CONCLUSION

¶ 35 For the reasons stated, we reverse the trial court's denial of defendant's leave to file a successive postconviction petition. We remand for second-stage postconviction proceedings.

¶ 36 Reversed and remanded, with directions.