2019 IL App (4th) 170827-U

NO. 4-17-0827

FILED
April 9, 2019
Carla Bender
4th District Appellate
Court, IL

IN THE APPELLATE COURT

OF ILLINOIS

FOURTH DISTRICT

THE PEOPLE OF THE STATE OF ILLINOIS,	)	Appeal from the
Plaintiff-Appellee,	)	Circuit Court of
v.	)	Macon County
DERRONDAS M. REED,	)	No. 06CF101
Defendant-Appellant.	)	
	)	Honorable
	)	Jeffrey S. Geisler,
	)	Judge Presiding.

JUSTICE TURNER delivered the judgment of the court.
Justices Steigmann and Harris concurred in the judgment.

ORDER

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

¶ 2 In August 2017, defendant, Derrondas M. Reed, filed a motion for leave to file a successive postconviction petition. In his motion, defendant asserted he was denied effective assistance by both trial and appellate counsel because (1) trial counsel failed to object to the special interrogatory regarding "severe bodily injury," (2) trial counsel failed to request a hearing on defendant's fitness, (3) trial counsel failed to object to the court's discussion with a State's witness that took place outside defendant's presence, (4) trial counsel failed to object to the prosecutor's statement in closing arguments referring to "the uncontradicted evidence," and (5) appellate counsel was ineffective for failing to argue trial counsel's ineffectiveness. Defendant also asserted his convictions for attempt (first degree murder) and home invasion

violated the one-act, one-crime rule. In October 2017, the Macon County circuit court entered an order denying defendant's motion for leave to file a successive postconviction petition. Defendant appeals, contending the circuit court erred by denying him leave to file a successive postconviction petition. We affirm.

¶ 3 I. BACKGROUND

¶ 4 After a May 2006 trial, a jury found defendant guilty of attempt (first degree murder) (720 ILCS 5/8-4(a), 9-1(a)(1) (West 2006)), aggravated battery with a firearm (720 ILCS 5/12-4.2(a)(1) (West 2006)), and home invasion (720 ILCS 5/12-11(a)(3) (West 2006)). The trial evidence had shown that, in late December 2005 or early January 2006, Jasmine Deviner ended her relationship with defendant after more than seven years of dating. Deviner testified defendant did not want the relationship to end. On January 12, 2006, Deviner got off work around 4 p.m. and received numerous calls from defendant. She eventually went to the home of her cousin, Latoyia Chapman, and continued to receive calls from defendant, in which he threatened her life. Around midnight, Chapman needed to go somewhere, and Deviner had to move her car out of the driveway so Chapman could leave. After Deviner returned her car to the driveway, she heard Chapman yell at her to get down. Deviner looked up, saw defendant on her car's hood, and dialed "9-1-1." Defendant then came to her driver's side window and started shooting. Deviner received at least five separate gunshot wounds. Chapman also identified defendant as the shooter. After he stopped shooting, defendant ran toward a Jeep. When Deviner saw defendant return, she ran into Chapman's home and went to the bathroom where she shut the door. She later heard glass break, and defendant came to the bathroom with a gun. Defendant dragged Deviner out of the house and into the front yard. Defendant and Michael Jarrett tried to lift Deviner, but they let go of her, got into the Jeep, and left.

¶ 5 Defendant filed a *pro se* posttrial motion, contending, *inter alia*, he did not receive effective assistance of counsel. The circuit court held a hearing under *People v. Krankel*, 102 Ill. 2d 181, 464 N.E.2d 1045 (1984), and its progeny on defendant's claim of ineffective assistance of counsel and found appointment of other counsel was not warranted. The court denied defendant's posttrial motion and the amended posttrial motion filed by counsel. In June 2006, the circuit court sentenced defendant to consecutive prison terms of 35 years for attempt (first degree murder) and 22 years for home invasion.

¶ 6 Defendant appealed and only argued the circuit court erred by denying his request to have a different attorney appointed to represent him on his posttrial claim of ineffective assistance of counsel. This court affirmed the circuit court. *People v. Reed*, 373 Ill. App. 3d 1177, 943 N.E.2d 344 (2007) (table) (unpublished order under Illinois Supreme Court Rule 23). Defendant filed a petition for leave to appeal to the supreme court, which was denied. *People v. Reed*, 226 Ill. 2d 602, 879 N.E.2d 936 (2007) (supervisory order denying leave to appeal).

¶ 7 In August 2007, defendant filed a motion for an order requiring trial counsel and the State to provide defendant with pretrial discovery materials. The circuit court denied the motion, and defendant appealed. On appeal, this court allowed OSAD's motion to withdraw as counsel and affirmed the circuit court's judgment. *People v. Reed*, No. 4-07-0823 (July 29, 2008) (unpublished order under Illinois Supreme Court Rule 23).

¶ 8 In August 2008, defendant filed a *pro se* postconviction petition, asserting (1) ineffective assistance of trial counsel for (a) failing to adequately consult with defendant before trial, (b) failing to present an alibi defense, and (c) preventing defendant from testifying; (2) ineffective assistance of appellate counsel for failing to challenge the sufficiency of the State's evidence and raise trial counsel's ineffectiveness; (3) the statute providing for the

enhancement of defendant's sentences violated the proportionate-penalties clause and the single-subject rule; (4) the prosecutor engaged in a pattern of misconduct; and (5) the cumulative errors at trial denied him due process and equal protection under the law. On August 12, 2008, the circuit court entered a written order, dismissing defendant's postconviction petition as frivolous and patently without merit.

¶ 9 Defendant appealed the circuit court's dismissal of his postconviction petition, and the Office of the State Appellate Defender (OSAD) filed a motion to withdrawal as counsel contending defendant did not have any meritorious issues. This court allowed OSAD's motion and affirmed the circuit court's dismissal of defendant's petition. *People v. Reed*, No. 4-08-0644 (Sept. 29, 2009) (unpublished order under Illinois Supreme Court Rule 23). Defendant filed a petition for leave to appeal to the supreme court, which was denied. *People v. Reed*, 235 Ill. 2d 600, 924 N.E.2d 459 (2010) (supervisory order denying leave to appeal).

¶ 10 In August 2017, defendant filed his petition for leave to file a successive postconviction petition, which is at issue in this appeal. In his motion, defendant raises several claims of ineffective assistance of appellate and trial counsel and contends his convictions for attempt (first degree murder) and home invasion violate the one-act, one-crime rule. As to the cause for his failure to raise the issues in his original postconviction petition, defendant asserted he did not have the mental competence or wherewithal to identify and raise the issues. Defendant noted he had suffered from mental illness since grade school and took medication for it. Defendant had also received social security for a mental disability since he was young. In support of his successive postconviction petition, defendant attached the following: (1) several excerpts from the record; (2) two of this court's Rule 23 orders (*Reed*, 373 Ill. App. 3d 1177, 943 N.E.2d 344; *Reed*, No. 4-08-0644); (3) an excerpt from the Physician's Desk Reference Family

Guide to Prescription Drugs; (4) a September 2016 letter from the Social Security Administration; (5) a letter from Joyce Reed, defendant's mother; (6) a letter from Marlon Reed, defendant's cousin; (7) a March 2017 affidavit by defendant; and (8) an August 2017 affidavit by defendant.

¶ 11 The circuit court entered a written order on October 25, 2017, denying defendant leave to file his successive postconviction petition. The court concluded defendant had failed to meet the cause-and-prejudice test.

¶ 12 On November 9, 2017, defendant filed a timely notice of appeal in sufficient compliance with Illinois Supreme Court Rule 606 (eff. July 1, 2017). See Ill. S. Ct. R. 651(d) (eff. July 1, 2017) (providing the procedure for appeals in postconviction proceedings is in accordance with the rules governing criminal appeals). Thus, we have jurisdiction of defendant's appeal under Illinois Supreme Court Rule 651(a) (eff. July 1, 2017).

¶ 13 II. ANALYSIS

¶ 14 Defendant argues he did establish cause and prejudice. The State disagrees. When the circuit court has not held an evidentiary hearing, this court reviews *de novo* the denial of a defendant's motion for leave to file a successive postconviction petition. See *People v. Gillespie*, 407 Ill. App. 3d 113, 124, 941 N.E.2d 441, 452 (2010).

¶ 15 Section 122-1(f) of the Post-Conviction Hearing Act (725 ILCS 5/122-1(f) (West 2016)) provides the following:

> "Only one petition may be filed by a petitioner under this Article 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. For purposes of this subsection (f): (1) a prisoner 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; and (2) a prisoner 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."

Thus, for a defendant to obtain leave to file a successive postconviction petition, both prongs of the cause-and-prejudice test must be satisfied. *People v. Guerrero*, 2012 IL 112020, ¶ 15, 963 N.E.2d 909.

¶ 16 With a motion for leave to file a successive postconviction petition, the court is just conducting "a preliminary screening to determine whether defendant's *pro se* motion for leave to file a successive postconviction petition adequately alleges facts demonstrating cause and prejudice." *People v. Bailey*, 2017 IL 121450, ¶ 24, 102 N.E.3d 114. The court is only to ascertain "whether defendant has made a *prima facie* showing of cause and prejudice." *Bailey*, 2017 IL 121450, ¶ 24. If the defendant did so, the court grants the defendant leave to file the successive postconviction petition. *Bailey*, 2017 IL 121450, ¶ 24.

¶ 17 As to defendant's appellate briefs, we note Illinois Supreme Court Rule 341(h)(7) (eff. May 25, 2018) requires an appellant's brief contain "[a]rgument, which shall contain the contentions of the appellant and the reasons therefor, with citation of the authorities and the pages of the record relied on." "A reviewing court is entitled to have the issues clearly defined with pertinent authority cited and is not simply a depository into which the appealing party may dump the burden of argument and research." *People v. Hood*, 210 Ill. App. 3d 743, 746, 569

N.E.2d 228, 230 (1991). An appellant's failure to cite any authority or to articulate an argument results in forfeiture of that argument on appeal. *People v. Oglesby*, 2016 IL App (1st) 141477, ¶ 205, 69 N.E.3d 328. As we will explain in the following paragraphs, defendant's briefs fail to sufficiently argue and provide citation to authority and the record to establish cause and prejudice.

¶ 18 Regarding cause, defendant contends he established cause for each claim because he had suffered from mental illness since grade school and did not have the assistance of counsel to assist him in identifying issues to be raised in a postconviction petition. In his original brief, defendant does not cite any legal authority in support of his contention. In his reply brief, he cites a case that reiterates the statutory language defining "cause" and contends his supporting documents attesting to his mental illness are sufficient to meet that definition. The documents attached to defendant's motion only support his contention he has a longstanding mental illness. Thus, defendant has only presented his subjective personal belief he could not properly draft a postconviction petition due to his mental illness. We disagree with defendant that alone meets the definition of "cause."

¶ 19 Moreover, as the State notes, a constitutional right to the assistance of counsel does not exist in postconviction proceedings. *People v. Suarez*, 224 Ill. 2d 37, 42, 862 N.E.2d 977, 979 (2007). With postconviction petitions, the right to counsel is wholly statutory (*Suarez*, 224 Ill. 2d at 42, 862 N.E.2d at 979), and section 122-4 of the Postconviction Act (725 ILCS 5/122-4 (West 2016)) provides for the right to counsel *only* if the postconviction petition is not dismissed at the first stage of the proceedings. Thus, the fact defendant was not represented by counsel when he filed his original postconviction petition does not constitute a constitutional or statutory violation. Last, we note our review of the record indicates defendant could have raised

all of his issues on direct appeal or in his original postconviction petition. Accordingly, we find defendant failed to establish cause, and the circuit court properly denied his motion for leave to file a successive postconviction petition.

¶ 20 With prejudice, defendant contends it exists for all of his claims but only specifically addresses prejudice as to his claims related to his fitness to stand trial and the *ex parte* communication. Even with those two claims, he does not cite to (1) any part of the trial proceedings that support his arguments and (2) legal authority regarding fitness to stand trial. Thus, defendant did not sufficiently argue his claims of prejudice and support them with citations to the record and legal authority.

¶ 21 III. CONCLUSION

¶ 22 For the reasons stated, we affirm the Macon County circuit court's judgment. As part of our judgment, we award the State its $75 statutory assessment against defendant as costs of this appeal.

¶ 23 Affirmed.