2019 IL App (5th) 160041-U

NO. 5-16-0041

IN THE

APPELLATE COURT OF ILLINOIS

FIFTH DISTRICT

THE PEOPLE OF THE STATE OF ILLINOIS,	)	Appeal from the
	)	Circuit Court of
Plaintiff-Appellee,	)	Perry County.
	)	
v.	)	No. 00-CF-25
	)	
SHANNON C. REYNOLDS,	)	Honorable
	)	James W. Campanella,
Defendant-Appellant.	)	Judge, presiding.

JUSTICE CHAPMAN delivered the judgment of the court.
Justices Welch and Moore concurred in the judgment.

ORDER

¶ 1 *Held*: The defendant failed to satisfy the "cause" element of the cause-and-prejudice test where his motion for leave to file a successive postconviction did not demonstrate an objective cause for his failure to raise either of his two claims in his initial petition. The defendant did not establish "prejudice" for his claim of ineffective assistance of plea counsel where he alleged that counsel failed to inform him of a plea offer, but did not demonstrate that the plea would have been entered before being revoked by the State or that it would have been accepted by the court. The defendant did not establish "prejudice" on his claim that the sentencing judge was biased against him due to the judge's friendship with the defendant's father-in-law where the sole basis for his claim was the existence of that friendship. The judge who presided over the defendant's plea proceedings and sentencing hearing did not abuse his discretion by declining to recuse himself from consideration of the defendant's motion to file a successive postconviction petition.

¶ 2 The defendant, Shannon Reynolds, appeals an order of the trial court denying his petition for leave to file a successive postconviction petition. He argues that (1) the court erred in

denying his petition because his allegations were sufficient to satisfy the cause-and-prejudice test and (2) the judge abused his discretion in declining to *sua sponte* recuse himself because the petition involved a claim that he was biased against the defendant during sentencing. We affirm.

¶ 3 In 2001, the defendant entered an open plea of guilty to one charge of aggravated criminal sexual assault. At the sentencing hearing, the State argued that the defendant should receive the maximum sentence of 30 years, while the defendant argued in favor of a sentence of 6 years, the statutory minimum. The court sentenced him to 25 years. The defendant filed a motion to reduce his sentence, which the court denied. The defendant appealed, and this court remanded the matter due to counsel's failure to file a certificate of compliance with Illinois Supreme Court Rule 604(d) (eff. Nov. 1, 2000). On remand, new counsel was appointed to represent the defendant. Counsel filed an amended motion to reconsider sentence, which the court denied. This court affirmed the defendant's sentence on appeal from that ruling. Subsequently, the defendant unsuccessfully requested collateral relief multiple times. He filed a postconviction petition, a petition for relief from judgment (735 ILCS 5/2-1401 (West 2012)), and a *habeas corpus* petition.

¶ 4 In December 2015, the defendant filed the pleadings at issue in this appeal—a successive postconviction petition and a motion for leave to file a successive postconviction petition. In the petition, the defendant alleged that he did not receive a fair sentencing hearing because the trial judge failed to inform him that he had a social relationship with the defendant's former father-in-law, with whom the defendant did not get along. We note that it appears from the record that the defendant and his former wife were still married at the time of the sentencing hearing. The defendant further alleged that he received ineffective assistance of plea counsel because plea

counsel failed to inform him that the State offered him a plea agreement involving an agreed sentence of six years.

¶ 5 Attached to the petition was an affidavit from Amy Reynolds, the defendant's former wife. She stated that the defendant's attorney, Dennis Fields, told her that the State made a plea offer of six years. She stated, however, that Fields told her "that 'we' were not accepting that offer because he could 'beat' their case." She further stated that her father, Jeffrey Ashauer, and Judge Campanella "had a friendship[,] including being 'golfing buddies.' " She explained that her father did not get along with the defendant. We note that Amy Reynolds' affidavit is dated May 11, 2015, seven months before the defendant filed his motion for leave to file the petition.

¶ 6 In his motion for leave to file the successive petition, the defendant alleged that the cause for his failure to bring his ineffective assistance claim during his previous postconviction petition was that there were "three new rules and remedies" that supported his claim that were not in effect until after September 2015. He did not specify what those rules and remedies were. He alleged that the cause for his failure to bring his claim of judicial bias earlier was that Judge Campanella "concealed his misconduct" by failing to disclose his friendship with the defendant's father-in-law. The defendant alleged that prejudice resulted from both claims because the claimed errors "so infected" his conviction that the "judgment of conviction and sentence violated due process." He asserted that counsel's ineffective assistance led to a plea that was not knowing or voluntary, which resulted in a harsher sentence. He further alleged that Judge Campanella's "biased conduct" likewise resulted in a harsher sentence.

¶ 7 On January 5, 2016, the court entered a written order denying the defendant's motion for leave to file a successive petition. The order was entered by Judge Campanella, the same judge who presided over the defendant's plea proceedings. In his order, Judge Campanella found that

the defendant failed to satisfy the cause-and-prejudice test (see *People v. Pitsonbarger*, 205 Ill. 2d 444, 459 (2002)). This appeal followed.

¶ 8 The Post-Conviction Hearing Act (725 ILCS 5/122-1 *et seq*. (West 2014)) provides a procedural framework by which a criminal defendant may challenge his conviction or sentence on the basis that it resulted from a substantial violation of his constitutional rights. *Pitsonbarger*, 205 Ill. 2d at 455. That act contemplates the filing of only a single postconviction petition. *People v. Edwards*, 2012 IL 111711, ¶ 22. As such, successive petitions "are disfavored by Illinois courts." *Id*. ¶ 29.

¶ 9 In order to file a successive postconviction petition, a defendant must first obtain leave of the court to do so. *People v. Tidwell*, 236 Ill. 2d 150, 157 (2010). Leave will be granted under only two circumstances. One circumstance is "what is known as the 'fundamental miscarriage of justice' exception." *Edwards*, 2012 IL 111711, ¶ 23 (quoting *Pitsonbarger*, 205 Ill. 2d at 459). That exception applies when the defendant demonstrates actual innocence. *Id.* The second exception—the one applicable here—is when the defendant is able to meet the cause-and-prejudice test. *Id*. ¶ 22 (citing *Pitsonbarger*, 205 Ill. 2d at 459); see also 725 ILCS 5/122-1(f) (West 2014).

¶ 10 The defendant must satisfy the cause-and-prejudice test with respect to each individual claim in his successive petition. *Pitsonbarger*, 205 Ill. 2d at 462. To do so, he must demonstrate both a cause for his failure to raise each claim in his initial petition and prejudice resulting from this failure. *People v. Crenshaw*, 2015 IL App (4th) 131035, ¶ 28 (quoting 725 ILCS 5/122-1(f) (West 2012)), *overruled on other grounds by People v. Bailey*, 2017 IL 121450, ¶ 38. To demonstrate "cause," the defendant must show that "some objective factor external to the defense" prevented him from raising the claim in the earlier proceedings. (Internal quotation

marks omitted.) *Pitsonbarger*, 205 Ill. 2d at 460 (quoting *People v. Flores*, 153 Ill. 2d 264, 279 (1992), quoting *McCleskey v. Zant*, 499 U.S. 467, 493 (1991), quoting *Murray v. Carrier*, 477 U.S. 478, 488 (1986)). To demonstrate "prejudice," the defendant must show that the claimed error "so infected the trial that the resulting conviction or sentence violated due process." 725 ILCS 5/122-1(f) (West 2014). He is not required to conclusively prove his claims prior to being granted leave to file his successive petition. See *People v. Smith*, 2014 IL 115946, ¶ 29. However, he must do more than allege the gist of constitutional claim. Because successive petitions are disfavored, the defendant must meet "a higher standard than the first-stage frivolous or patently without merit standard." *Id.* ¶ 35 (citing *Edwards*, 2012 IL 111711, ¶¶ 26-27); see also *People v. Jellis*, 2016 IL App (3d) 130779, ¶ 24.

¶ 11 The defendant is required to satisfy both prongs of the cause-and-prejudice test. *Pitsonbarger*, 205 Ill. 2d at 464; *Crenshaw*, 2015 IL App (4th) 131035, ¶ 28. To do so, "he must submit enough in the way of documentation" to allow the court to determine that both prongs of the test have been satisfied. *Tidwell*, 236 Ill. 2d at 161. Whether a defendant has satisfied the cause-and-prejudice test is a question of law. *People v. Bailey*, 2017 IL 121450, ¶ 24. Thus, we review *de novo* the court's ruling on a motion for leave to file a successive petition. *Crenshaw*, 2015 IL App (4th) 131035, ¶ 38.

¶ 12 The defendant first argues that he satisfied his burden of demonstrating both cause and prejudice for each of the claims he raised in his petition. He argues that the court erred in finding otherwise. We disagree.

¶ 13 We first consider the defendant's claim of ineffective assistance of plea counsel. In his motion for leave to file a successive petition, the defendant asserted that the cause for his failure to raise this claim in his first postconviction petition was the fact that the "three new rules and

remedies" needed to support the claim did not exist at that time. He concedes on appeal that this assertion was not sufficient, and we agree. As we noted earlier, the defendant did not specify the pertinent rules and remedies, and claims of ineffective assistance of plea counsel were certainly cognizable when the defendant filed his first postconviction petition in 2009. See *e.g.*, *People v. Hall*, 217 Ill. 2d 324 (2005) (addressing such a claim).

¶ 14 The defendant argues, however, that the allegations of the petition itself coupled with the statements in Amy Reynolds' affidavit were sufficient to demonstrate cause for the defendant's failure to raise the claim earlier. He emphasizes that he alleged that counsel never informed him of the six-year plea offer, an allegation that must be taken as true because it is not rebutted by the record. See *Pitsonbarger*, 205 Ill. 2d at 455. He argues that he "apparently only learned of the plea offer from Amy," whose affidavit is dated May 11, 2015. Although he does not explicitly state as much, we presume that he is urging us to infer from this that Amy informed the defendant of the six-year plea offer in May 2015. We are not persuaded.

¶ 15 We acknowledge that trial courts do have the discretion to look beyond the allegations in a motion for leave to file a successive petition in determining whether the defendant meets the cause-and-prejudice test. Indeed, as our supreme court explained in *Tidwell*, the court may make this determination even if the defendant does not file a motion or expressly request leave to file his successive petition. *Tidwell*, 236 Ill. 2d at 161. Thus, the court had the discretion to consider whether the petition and supporting documentation demonstrated cause on a basis not alleged in the motion.

¶ 16 However, even assuming the court chose to exercise this discretion, we do not believe the allegations in the petition and the statements in Amy's affidavit were sufficient to demonstrate cause. Nothing in the affidavit indicates when Amy learned of the alleged six-year plea deal from

plea counsel, and nothing in either the affidavit or the petition indicates when she told the defendant about it. The defendant cannot meet his burden of demonstrating cause and prejudice by requiring the court to make inferences and assumptions. The cause-and-prejudice test is meant to be a significant procedural hurdle. See *People v. Tenner*, 206 Ill. 2d 381, 392 (2002).

¶ 17 We likewise find that the defendant failed to demonstrate prejudice with respect to his claim of ineffective assistance of plea counsel. We note that we do not agree with the trial court's reason for finding this to be the case. The court found that the defendant could not demonstrate prejudice from his claim because he did not go to trial. However, criminal defendants have a constitutional right to the assistance of counsel during the plea-bargaining process. *People v. Hale*, 2013 IL 113140, ¶ 15. This right exists regardless of whether the defendant ultimately pleads guilty or goes to trial. See, *e.g.*, *People v. Beasley*, 2017 IL App (4th) 150291; *People v. Edmonson*, 408 Ill. App. 3d 880 (2011). Claims such as the defendant's may therefore be raised in a successive petition as long as the defendant is able to satisfy the procedural hurdles for filing one. See *People v. Jellis*, 2016 IL App (3d) 130779, ¶¶ 26-30 (evaluating whether a defendant who pled guilty established cause and prejudice for his claim of ineffective assistance of plea counsel). However, we review the court's conclusion, not its rationale, and we may affirm its ruling on any basis appearing in the record. See *People v. Dinelli*, 217 Ill. 2d 387, 403 (2005).

¶ 18 To support a claim of ineffective assistance of plea counsel based on an allegation that counsel failed to advise the defendant of a plea offer, the defendant must demonstrate that there is a reasonable probability that he would have accepted the plea offer if not for counsel's deficient advice. *Hale*, 2013 IL 113140, ¶ 18. To do so, he must present something more than his own subjective and self-serving testimony. However, a significant disparity between the sentence faced by the defendant without the deal and a much shorter sentence offered in the deal provides

support for a defendant's claim. *Id*. The defendant must also demonstrate a reasonable probability that the plea would have been entered before the prosecution revoked the offer, and he must demonstrate a reasonable probability that the trial court would have accepted the plea. *Id*. ¶ 19 (quoting *Missouri v. Frye*, 566 U.S. 134, 147 (2012)).

¶ 19 Here, there is a significant disparity between the 25-year sentence imposed on the defendant and that 6-year sentence he alleges the State offered in a plea deal. However, the defendant did not allege, much less demonstrate, that he would have accepted the offer before it was revoked or that the plea agreement would have been accepted by the court. Without such allegations and adequate supporting documentation, the defendant cannot satisfy his burden of demonstrating prejudice on this claim. See *Jellis*, 2016 IL App (3d) 130779, ¶ 30.

¶ 20 We turn our attention to the defendant's claim that he did not receive a fair sentencing hearing because of Judge Campanella's undisclosed social relationship with the defendant's then father-in-law, Jeffrey Ashauer. We find that the defendant has not satisfied either element of the cause-and-prejudice test with respect to this claim.

¶ 21 Although the defendant alleged in his motion that Judge Campanella "concealed" his friendship with Ashauer by failing to disclose it during the plea proceedings, he did not state when or how he learned of the alleged friendship. Similarly, Amy Reynolds did not state in her affidavit when or how she learned that Judge Campanella knew her father, nor did she state when she told the defendant of this fact. As we explained earlier, this is insufficient to demonstrate cause for failing to bring the claim in the defendant's initial postconviction petition.

¶ 22 The defendant has also not satisfied the prejudice part of the test. Trial judges are presumed to be fair and impartial. A party asserting judicial bias must overcome this presumption. *Eychaner v. Gross*, 202 Ill. 2d 228, 280 (2002). To do so, he must present evidence

of the judge's personal bias and evidence that the judge engaged in prejudicial conduct during the proceedings. *Id*. Here, the defendant's petition did not point to any prejudicial conduct that occurred during the plea proceedings. On appeal, he appears to argue that Judge Campanella's friendship with Ashauer created an inherent personal bias against the defendant. He asserts that the allegations in his petition and the statements in Amy's affidavit "*imply* that Judge Campanella sentenced Mr. Reynolds more harshly because Ashauer biased Judge Campanella against Mr. Reynolds." (Emphasis added.) We are not persuaded by this highly speculative claim. The defendant did not specifically allege that Judge Campanella relied on any information obtained from Ashauer on matters outside the record when sentencing the defendant, and there is nothing in the record to indicate that he did so. In fact, the record indicates that in sentencing the defendant, Judge Campanella considered proper factors such as the psychological harm to the victim and the defendant's lack of remorse. Without any indication that the judge relied on matters outside the record or engaged in conduct demonstrating his bias during the plea proceedings or sentencing hearing, the defendant cannot satisfy the prejudice part of the cause-and-prejudice test. See *Crenshaw*, 2015 IL App (4th) 131035, ¶ 44.

¶ 23 It is also worth noting that, absent evidence of actual judicial bias, questions of judicial disqualification due to personal bias or kinship do not have constitutional dimensions. *People v. Del Vecchio*, 129 Ill. 2d 265, 274 (1989). This is important because postconviction proceedings are collateral proceedings limited to consideration of constitutional claims. *Pitsonbarger*, 205 Ill. 2d at 455-56. A constitutional violation occurs if a judge presides over a case that "involves a possible temptation such that the average person, acting as judge, could not hold the balance nice, clear, and true between the State and the accused." *Del Vecchio*, 129 Ill. 2d at 275. Disqualification of a judge due to potential bias is constitutionally mandated in only "the most

extreme cases." *Id*. Because the defendant's claim would not have entitled him to relief if raised earlier, he cannot show "prejudice" from his failure to do so. We conclude that the defendant has failed to establish cause and prejudice for either of his claims. We therefore find no error in the court's decision to deny his motion for leave to file a successive petition.

¶ 24 The defendant's second argument is that the Judge Campanella abused his discretion by not deciding, *sua sponte*, to recuse himself from the case. We disagree.

¶ 25 As the defendant acknowledges, a judge's decision on whether to recuse himself from a particular case "rests *exclusively within the determination of the individual judge*." (Emphasis in original.) *In re Marriage of O'Brien*, 2011 IL 109039, ¶ 45. On appeal, we consider whether a trial judge's decision not to recuse himself was an abuse of discretion. *People v. Kliner*, 185 Ill. 2d 81, 169 (1998).

¶ 26 Although judges are vested with considerable discretion, Illinois Supreme Court Rule 63(C)(1) provides that "[a] judge *shall* disqualify himself or herself in a proceeding in which the judge's impartiality might reasonably be questioned." (Emphasis added.) Ill. S. Ct. R. 63(C)(1) (eff. Mar. 26, 2001). Our Illinois Supreme Court has held that this rule "imposes an objective, reasonable person standard." *Barth v. State Farm Fire & Casualty Co.*, 228 Ill. 2d 163, 176 (2008). The court explained that recusal is therefore required in cases where "a reasonable person might question the judge's ability to rule impartially." *Id*. This rule is not limited to cases involving actual bias; it also applies in cases "involving the appearance of impropriety." *O'Brien*, 2011 IL 109039, ¶ 43 (citing *People v. Buck*, 361 Ill. App. 3d 923, 931 (2005), and *People v. McLain*, 226 Ill. App. 3d 892, 902 (1992)).

¶ 27 Rule 63(C)(1) contains a nonexhaustive list of circumstances under which recusal is warranted because reasonable people might question a judge's impartiality. The defendant

contends that two of those circumstances are present here. Specifically, he notes that the rule provides that recusal is required in cases where "the judge has a personal bias or prejudice concerning a party" and in cases where the judge has "personal knowledge of disputed evidentiary facts concerning the proceeding." Ill. S. Ct. R. 63(C)(1)(a) (eff. Mar. 26, 2001). We do not find either of these circumstances to be present in this case.

¶ 28 We first note that a trial judge is in the best position to assess whether he harbors a bias against a defendant. *Kliner*, 185 Ill. 2d at 169. As previously discussed, Judge Campanella did not engage in any conduct during the plea proceedings or sentencing hearing that demonstrated a bias against the defendant. See *id*. at 170 (refusing to find recusal warranted where the trial judge's conduct did not demonstrate a bias). We also do not believe that a reasonable person would question a judge's impartiality or believe him to have a personal bias against a defendant merely because he is friends with someone who does not get along with the defendant. Thus, Judge Campanella was not required to recuse himself on the basis of a perceived personal bias.

¶ 29 We also do not believe that recusal was necessary on the basis that Judge Campanella had personal knowledge of disputed factual matters. The defendant points out that Judge Campanella had personal knowledge as to the existence and nature of his social relationship with Jeffrey Ashauer. This is obviously true, but we do not find it to be relevant. The only question before the court was whether the defendant established cause and prejudice for his failure to raise his claims in his initial postconviction petition. As we explained earlier, the defendant failed to establish cause on his claim of judicial bias because he failed to allege and adequately document any objective cause for his failure to raise the claim in his initial petition. As we also explained, the defendant failed to establish prejudice on this claim because the mere existence of a friendship with someone who dislikes a defendant is not enough to support a claim of judicial bias. In other

words, the defendant did not establish prejudice because he would not be entitled to relief on the claim assuming the factual allegations are true. The court was not required to consider factual matters outside the record to make this determination.

¶ 30 In this regard, this case stands in stark contrast to *People v. Wilson*, 37 Ill. 2d 617 (1967), a case relied upon by the defendant. There, the defendant's postconviction petition alleged that the defendant was "improperly induced" to plead guilty due to statements the trial judge made to defense counsel. The petition set forth these statements with specificity. *Id.* at 618. The petition was assigned to the same judge who presided over the defendant's plea proceedings. *Id*. at 618-19. The defendant requested a change of venue, arguing that the allegations in his petition included factual matters on which the judge had personal knowledge. *Id*. at 619. The request was denied, and the judge subsequently denied the petition. *Id*.

¶ 31 On appeal, the supreme court held that, although the defendant did not have an absolute right to a change of venue under the Post-Conviction Hearing Act, the trial judge abused his discretion by failing to recuse himself under the circumstances of the case. *Id*. at 621. This was so, the court explained, because the alleged conversations between the judge and defense counsel "may be material to a determination of [the defendant's] rights." *Id*. The court further explained that, as such, "either the trial judge would be a material witness to [the] proceedings[ ] or would have knowledge *de hors* the record of the truth or falsity of these allegations." *Id*.

¶ 32 Here, unlike in *Wilson*, the defendant had to satisfy the cause-and-prejudice test before his petition could even be deemed to be filed. See *Crenshaw*, 2015 IL App (4th) 131035, ¶ 28. *Wilson* apparently involved second or third stage postconviction proceedings. See *Wilson*, 37 Ill. 2d at 619 (noting that the petition was "heard" by the original trial judge). The court in that case was therefore called upon to make factual findings. By contrast, the court in this case was called

upon to determine whether the defendant established cause and prejudice based on the pleadings. See *Bailey*, 2017 IL 121450, ¶ 24. Thus, we find that it was not necessary for Judge Campanella to recuse himself on the basis that he had personal knowledge of disputed factual matters. We conclude that he did not abuse his discretion by declining to recuse himself from considering the defendant's motion.

¶ 33 For the foregoing reasons, we affirm the order of the court denying the defendant's motion for leave to file a successive postconviction petition.

¶ 34 Affirmed.