2020 IL App (1st) 172462-U

No. 1-17-2462

Order filed September 25, 2020

Sixth Division

IN THE

APPELLATE COURT OF ILLINOIS

FIRST DISTRICT

THE PEOPLE OF THE STATE OF ILLINOIS,	)	Appeal from the
	)	Circuit Court of
Plaintiff-Appellant,	)	Cook County.
	)	
v.	)	No. 10 CR 8443
	)	
MICHAEL STEELE,	)	Honorable
	)	Luciano Panici,
Defendant-Appellee.	)	Judge, presiding.

JUSTICE CONNORS delivered the judgment of the court.
Justices Harris and Griffin concurred in the judgment.

ORDER

¶ 1 *Held*: We affirm the trial court's denial of defendant's *pro se* motion for substitution of judge when defendant's claim of prejudice is forfeited because he failed to raise it on direct appeal.

¶ 2 Following a jury trial, defendant Michael Steele was convicted of first-degree murder and sentenced to 55 years in prison. On appeal, we affirmed defendant's conviction and sentence while remanding to the trial court for a preliminary inquiry into defendant's *pro se* claims of ineffective assistance of counsel. See *People v. Steele*, 2016 IL App (1st) 140116-U. On remand, defendant

filed a *pro se* motion for substitution judge. The trial court denied the motion, held a preliminary inquiry pursuant to *People v. Krankel*, 102 Ill. 2d 181 (1984), and denied defendant relief on his ineffectiveness claims. Defendant appeals, contending that the trial court erred when it denied his *pro se* motion for substitution of judge without a hearing or forwarding to another judge for consideration. We affirm.

¶ 3 Defendant's arrest and prosecution arose out of the shooting death of Tilford Jones on April 15, 2010. At trial, Jasmine Parker testified that shortly before midnight on April 15, 2010, she drove to the "old projects" in Robbins to pick up a friend. There, she saw a group of people, including Jones, defendant, and Capri Pickett on the sidewalk. Jones and defendant were arguing. Jones then entered Pickett's vehicle. Defendant remained on the sidewalk and said he would "beat" Jones's "ass" and "boy, I'll kill you." Parker looked away and when she looked back, defendant and Jones were fighting. Defendant ended up on his back with Jones leaning over him. Defendant then drew a firearm and shot Jones, who fell to the ground. Parker ducked and heard four or five gunshots. When she looked up, she saw defendant walk by holding a firearm. During cross-examination, Parker denied telling a detective that defendant and Jones argued over a girl, that Jones exited Pickett's vehicle and approached defendant, and that Jones punched defendant in the face while defendant was the ground.

¶ 4 Pickett, Jones's girlfriend, testified that she and Jones were talking to family and friends when she heard Jones say, "it's okay bro," and defendant say "f*** that shit." Pickett did not know why defendant was upset. When she asked Jones what was going on, he told her to buy him some cigarettes so that they could leave. Pickett began to walk away and turned around when she heard defendant raise his voice. She saw defendant hit Jones in the face and the men begin to fight.

Defendant was on the ground with Jones squatting over him when defendant stopped swinging, reached into his "belt area," drew a firearm, and shot Jones. Pickett ran away and "blanked out" for a few seconds. When she looked back, Jones was on the ground with defendant standing over him. Defendant then fired four more shots at Jones.

¶ 5 Nurse Jane Johnson testified that defendant was treated at a hospital on April 16, 2010, for a gunshot wound to his left arm and that defendant said he was shot by a would-be robber.

¶ 6 Defendant testified that he knew Jones and had dated Pickett. On April 15, 2010, he approached Pickett to ask her out. She "didn't agree or disagree," but Jones had an "attitude" and told him to get the "f*** out of her face." Defendant replied that he could talk to Pickett if he wanted, and the men began to argue. Jones entered Pickett's car, turned the radio up, and said if defendant talked to Pickett again, he would "slap the shit out of" him. Defendant responded, "[w]hatever, it's my bitch" and started talking to other people. Jones then approached him and struck him in the face with something that "looked like a gun." Jones threw defendant to the ground. Although defendant yelled at Jones to stop and for someone to break up the fight, Jones repeatedly hit him in the face. Defendant "pulled *** out" a firearm, squeezed the trigger, and shot himself in the arm. At this point, Jones began to back "up off" defendant. Defendant shot the firearm in Jones's direction as defendant ran away.

¶ 7 Defendant then called his mother and she took him to the hospital. Defendant admitted that he lied about how he was shot at the hospital because he was afraid of Jones's family. Defendant was taken from the hospital to a police station. During cross-examination, defendant admitted that he gave the police several different, false, accounts of the evening's events because he was scared

and confused. He also admitted that he shot himself with his own firearm, rather than the one that Jones struck him with.

¶ 8 Cook County sheriff's detective Steven Moody testified that when he asked Parker what defendant and Jones argued about, she said that "she wasn't sure, [but] maybe about a girl." Parker also said that Jones exited the vehicle and punched defendant in the face, the men fought, and defendant fell to the ground with Jones on top.

¶ 9 Marshall Bryant testified that he was robbed at gunpoint in December 2005 by two men and identified a photograph of Jones as depicting one of the robbers. The parties stipulated that Jones pled guilty to robbery in 2006 and was sentenced to three years in prison.

¶ 10 Following deliberations, the jury found defendant guilty of first-degree murder. Defendant filed a posttrial motion, which was denied. The matter then proceeded to sentencing. The presentence investigation report stated, in pertinent part, that defendant was prescribed Wellbutrin, Risperdal, and Celexa while in jail to treat anxiety and depression. After the parties made arguments in aggravation and mitigation, defendant addressed the court.

¶ 11 Defendant stated that his counsel was ineffective because although defendant told counsel that he took "psychiatric medication" for anxiety, depression, and "hearing voices," defendant did not undergo a fitness evaluation prior to trial and was not "medicated" during trial. Defendant then challenged Parker's statement, arguing that anyone who made a statement must be videotaped or sign a written statement to acknowledge it. He argued it was impossible to "cross-examine someone's statement" if she did not sign or acknowledge it, and because Parker did not sign her statement, she did not "acknowledge" it and there was no proof that she made it. The trial court

thanked defendant and sentenced him to 55 years in prison, comprising 30 years for first degree murder plus a 25-year firearm enhancement.

¶ 12 On appeal, defendant contended that (1) his conviction should be reduced to second degree murder because the evidence showed both his unreasonable belief in self-defense and his sudden and intense passion from serious provocation, (2) the trial court failed to inquire into his *pro se* posttrial claims of ineffective assistance of trial counsel, and (3) his sentence was excessive. We affirmed defendant's conviction and sentence while remanding the cause for an inquiry into his *pro se* posttrial ineffectiveness claims. See *People v. Steele*, 2016 IL App (1st) 140116-U.

¶ 13 In November 2016, defendant filed a *pro se* motion for substitution of judge alleging that the trial judge would be biased and prejudice defendant's cause at the *Krankel* hearing because the judge made rulings which "showed deep-seated favortism [*sic*] for the State" throughout pretrial, trial, and posttrial proceedings, and "ignored" defendant's *pro se* posttrial claims of ineffective assistance of counsel. On February 6, 2017, the trial judge found that the motion for substitution of judge was untimely and noted that he presided over the trial and was the "only one" that could determine whether defendant received effective assistance. Moreover, the judge found that the cause was "specifically sent here for the limited purpose" of a *Krankel* inquiry.

¶ 14 On August 1, 2017, the trial court held a preliminary *Krankel* inquiry. Defendant reiterated that trial counsel failed to inquire into his mental health and to investigate Parker and her statement. Defendant then stated that he was prepped for the stand 15 minutes before he testified, and that counsel failed to investigate witnesses Sabrina Atkins, Dawn Hughes, and Lawriash Wiks. Defendant argued that he told counsel six months before trial that Wiks would corroborate that Jones was the initial aggressor who attacked defendant before defendant "pulled out his gun and

shot him." Defendant stated that Wiks came to court and told trial counsel that he was ready to testify, but counsel stated that he could not because he was not on the witness list. Defendant further argued that counsel did not tell him about the 25-year sentencing enhancement and if he had known he was facing a "*de facto* life sentence" he would have asked for a plea.

¶ 15 Counsel replied that during their "many meetings" prior to trial, defendant stated he was nervous and depressed but that his competence to stand trial was never an issue. Counsel was unable to locate Parker before trial because she had moved, but spoke to her on the day of trial. He remembered that it would be difficult to impeach Parker because she said things consistent with the officer's report but detrimental to defendant. Counsel was not aware of Wiks, but if he had known, he would have had Wiks testify at trial. Counsel stated that the "problem" was not who was the initial aggressor; rather, it was the testimony that defendant stood over Jones and shot him. Thus, what the defense "really needed" was a witness who would say that defendant was not standing over Jones, that both men were standing, or that Jones was "still being aggressive." Regarding Dawn Hughes and another witness, Brittany Hughes, counsel stated that his notes indicated that they did not remember defendant discharging a firearm, so their testimony would not be helpful.[1] The trial court denied defendant relief.

¶ 16 On appeal, defendant makes no argument regarding the trial court's denial of relief following the preliminary *Krankel* inquiry, and he has therefore forfeited review thereof. See Ill. S. Ct. R. 341(h)(7) (eff. May 28, 2018) ("[p]oints not argued are forfeited"). Rather, defendant contends that the trial court erred in denying his *pro se* motion for substitution of judge without a

[1] Counsel did not mention Sabrina Atkins.

hearing before a judge not named in the motion. In response, the State maintains the trial court properly denied the motion because it failed to meet the statutory requirements.

¶ 17 Initially, we note that defendant's claim that the trial judge was prejudiced rests on pretrial, trial and posttrial rulings that, according to defendant, showed favoritism to the State and the fact that the court "ignored" defendant's *pro se* posttrial claims of ineffective assistance of counsel. In other words, these claims rest on matters contained in the trial record and could have been raised on direct appeal. Generally, a claim that could have been raised in a prior appeal but was not is forfeited. *People v. Allen*, 2015 IL 113135, ¶ 20.

¶ 18 Here, the alleged prejudice was of record and could have been raised before this court on direct appeal. However, defendant did not file his *pro se* motion for substitution of judge until after the cause was remanded for a preliminary *Krankel* hearing. Illinois Supreme Court Rule 366(a)(5) permits a reviewing court, in its discretion, to make any order or grant any relief that a particular case may require. Ill. S. Ct. R. 366(a)(5) (eff. Feb. 1, 1994). "This authority includes the power to reassign a matter to a new judge on remand." *Eychaner v. Gross*, 202 Ill. 2d 228, 279 (2002); see also *People v. Tally*, 2014 IL App (5th) 120349, ¶ 43. Thus, had defendant raised his claim of prejudice on direct appeal, this court could have determined whether the trial judge displayed "animosity, hostility, ill will or distrust" toward defendant such that remand to a different judge was warranted. See *People v. Vance*, 76 Ill. 2d 171, 181 (1979). Accordingly, because defendant could have raised this issue on direct appeal, but did not, it is forfeited. *Allen*, 2015 IL 113135, ¶ 20.

¶ 19 Nevertheless, even if we would not find that defendant forfeited his claim, we would affirm the trial court's ruling. Initially, we note that defendant concedes that his motion for substitution

of judge was not supported by an affidavit. Under section 114-5(d) of the Illinois Code of Criminal Procedure of 1963, a substitution for cause petition must be supported by an affidavit. 725 ILCS 5/114-5(d) (West 2012); *People v. Jones*, 197 Ill. 2d 346, 355 (2001). Our supreme court has stated that our legislature "has placed a heavy burden on a defendant to justify a substitution for cause," that the motion must be supported by an affidavit, and the affidavit must be specific and nonconclusory. *Jones*, 197 Ill. 2d at 354-55.

¶ 20 Further, defendant cannot show prejudice. When a party requests substitution of a judge for cause, he must "first meet initial threshold requirements by alleging sufficient grounds, if taken as true, that would justify granting a substitution for cause." *People v. Klein*, 2015 IL App (3d) 130052, ¶ 85. "To prevail on a motion for substitution of a trial judge for cause, a defendant must demonstrate that the facts and circumstances indicate that the judge was prejudiced." *People v. Haywood*, 2016 IL App (1st) 133201, ¶ 29. 130052, ¶ 85. It is defendant's burden to establish actual prejudice. *Klein*, 2015 IL App (3d) "To meet this burden, the defendant must establish 'animosity, hostility, ill will, or distrust towards this defendant.' " *People v. Patterson,* 192 Ill. 2d 93, 131 (2000) (quoting *Vance*, 76 Ill. 2d at 181).

¶ 21 A trial judge is presumed to be impartial, and the party asserting the bias must overcome this presumption. *In re Estate of Hoellen*, 367 Ill. App. 3d 240, 248 (2006). When prejudice is invoked as the basis for seeking substitution of a judge for cause, "it must normally stem from an extrajudicial source, *i.e.*, from a source other than from what the judge learned from her participation in the case before her." *In re Estate of Wilson*, 238 Ill. 2d 519, 554 (2010). A trial judge's "previous rulings almost never constitute a valid basis for a claim of judicial bias or

partiality." *Id.* A trial court's alleged erroneous findings and rulings are insufficient bases to believe that the court has a personal bias against a party. *Eychaner*, 202 Ill. 2d at 280.

¶ 22 We will not reverse the trial court's determination on a motion for substitution of judge for cause unless the finding was against the manifest weight of the evidence, meaning that it was clearly erroneous, or the record supports an opposite conclusion. *Haywood*, 2016 IL App (1st) 133201, ¶ 29.

¶ 23 Defendant has not met his burden of establishing prejudice. In defendant's motion for substitution of judge, he asserted that the trial court made "various bias[ed] and prejudicial rulings toward defendant and defendant[‘s] case which showed deep-seated favoritism for the State." Specifically, defendant took issue with the trial court's rulings that prevented him from presenting evidence that the victim possessed cocaine and from arguing about the victim's propensity for violence in opening statements. Defendant also alleged that the trial court showed bias when defendant was prevented from impeaching Capri Pickett with her videotaped statement. However, defendant has failed to demonstrate how these rulings show that the trial judge was actually prejudiced against him, or how the rulings show that the judge had animosity, hostility, ill will, or distrust towards defendant. Further, as discussed above, the trial judge's alleged erroneous rulings are insufficient reasons to conclude that the judge had a personal bias against defendant. Accordingly, defendant has failed to meet his burden of proving that the trial judge was prejudice against him. Thus, we affirm the trial court's order denying defendant's motion for substitution of judge.

¶ 24 For the forgoing reasons, we affirm the judgment of the circuit court of Cook County.

¶ 25 Affirmed.