

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).

2019 IL App (4th) 170526-U
NOS. 4-17-0526, 4-17-0563 cons.

FILED
October 11, 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.)	Champaign County
MICHAEL L. LIGHTFOOT,)	Nos. 04CF176
Defendant-Appellant.)	
)	Honorable
)	Thomas J. Difanis,
)	Judge Presiding.

JUSTICE KNECHT delivered the judgment of the court.
Justices Steigmann and Turner concurred in the judgment.

ORDER

¶ 1 *Held:* We deny the Office of the State Appellate Defender’s motion to withdraw as appellate counsel without prejudice.

¶ 2 This case comes to us on the motion of the Office of the State Appellate Defender (OSAD) to withdraw its representation of defendant on the ground no meritorious issue can be raised on appeal. For the reasons that follow, we deny OSAD’s motion to withdraw without prejudice.

¶ 3 I. BACKGROUND

¶ 4 On January 29, 2004, defendant, Michael L. Lightfoot, was arrested and charged with unlawful possession of a controlled substance (1 gram or more, but less than 15 grams of cocaine) with intent to deliver (720 ILCS 570/401(c)(2) (West 2002)) within 1000 feet of a

public park, a Class X felony (720 ILCS 570/407(b)(1) (West 2002)). Defendant had two prior Class X convictions and was therefore subject to a mandatory natural life sentence, pursuant to section 33B-1(a)(e) of the Criminal Code of 1961 (720 ILCS 5/33B-1(a)(e) (West 2002)) and section 5/5-5-3(c)(7) of the Unified Code of Corrections (Unified Code) (730 ILCS 5/5-5-3(c)(7) (West 2002)).

¶ 5 Defendant's first jury trial resulted in a hung jury. On December 8, 2004, defendant was found guilty at his second jury trial and sentenced to natural life imprisonment.

¶ 6 On direct appeal, defendant argued (1) the enhancing statute for possession with intent to deliver within 1000 feet of a public park (720 ILCS 570/407(b)(1) (West 2002)) was unconstitutional as applied in his case, as he was within a dwelling at the time of the possession; (2) the trial court erred by allowing improper expert testimony about the difference between a drug user and a drug seller; (3) his sentence was too severe; and (4) the State failed to prove him guilty beyond a reasonable doubt. This court affirmed defendant's conviction and sentence.

People v. Lightfoot, 368 Ill. App. 3d 1239 (2006) (table) (unpublished order under Illinois Supreme Court Rule 23).

¶ 7 On September 12, 2007, defendant filed a petition for postconviction relief under the Post-Conviction Hearing Act (Postconviction Act) (725 ILCS 122-1 to 122-7 (West 2006)). In his petition, defendant alleged (1) the trial court abused its discretion by issuing three jury instructions, (2) he received ineffective assistance of counsel where his trial counsel failed to object to improper expert testimony, and (3) he received ineffective assistance of counsel where his appellate counsel failed to raise all meritorious issues on his direct appeal. The trial court denied defendant's petition as frivolous and patently without merit. This court affirmed the trial

court's judgment. *People v. Lightfoot*, 388 Ill. App. 3d 1152 (2009) (table) (unpublished order under Illinois Supreme Court Rule 23).

¶ 8 On May 30, 2017, defendant filed a *pro se* "Petition for Post-Conviction Relief—pursuant to 725 ILCS 5/122-1 thru f) OR (Motion to Vacate Judgement [*sic*] and Void Sentence pursuant to 735 ILCS 5/2-1401(f)." In the petition, defendant challenged the charging instrument and various sentencing statutes. On June 2, 2017, the trial court entered an order dismissing defendant's "petition for post-conviction relief" pursuant to section 122-1(f) of the Postconviction Act (725 ILCS 5/122-1(f) (West 2016)). The court also stated it would not consider the "hybrid pleading" because defendant cited both the Postconviction Act and section 2-1401 of the Code of Civil Procedure (Civil Code) (735 ILCS 5/2-1401 (West 2016)).

¶ 9 On June 19, 2017, defendant filed a *pro se* "petition for post-conviction relief [] pursuant to 725 ILCS 5/122-1 thru f." Defendant asserted the same claims as in his "hybrid pleading." On June 21, 2017, the trial court dismissed defendant's postconviction petition pursuant to section 122-1(f) of the Postconviction Act (725 ILCS 5/122-1(f) (West 2016)).

¶ 10 On July 3, 2017, defendant filed a timely notice of appeal from the June 2, 2017, order, and OSAD was appointed to represent him. This court docketed the appeal as No. 4-17-0563. Also on July 3, 2017, defendant filed a timely notice of appeal from the June 21, 2017, order, and this court docketed the appeal as No. 4-17-0526. On August 2, 2017, this court consolidated defendant's two appeals.

¶ 11 In these two consolidated appeals, OSAD moves to withdraw its representation of defendant, asserting it (1) read the record on appeal; (2) reviewed the facts and applicable law; and (3) discussed the case with another attorney, who also reviewed the record. OSAD concludes an appeal in this case would be without arguable merit. We granted defendant leave to file

additional points and authorities, and he has responded. The State has also filed a brief and defendant has filed a reply brief. After reviewing the briefs, we deny OSAD's motion to withdraw without prejudice.

¶ 12

II. ANALYSIS

¶ 13 OSAD asserts "the genesis of this specific appeal at bar concerns [defendant's] *pro se* filing of another successive Petition for Post Conviction Relief on June 19, 2017." OSAD correctly states the trial court dismissed defendant's postconviction petition pursuant to section 122-1(f) of the Postconviction Act (725 ILCS 5/122-1(f) (West 2016)), and defendant filed a timely notice of appeal from the June 21, 2017, order. This court docketed the appeal as No. 4-17-0526.

¶ 14

With regard to the *pro se* pleading defendant filed on May 30, 2017, OSAD correctly states the pleading was dismissed on June 2, 2017. As noted above, the trial court first dismissed defendant's *pro se* "petition for post-conviction relief" pursuant to section 122-1(f) of the Postconviction Act (725 ILCS 5/122-1(f) (West 2016)). The court then stated it would not consider the pleading because it was a "hybrid pleading." However, OSAD's assertion "[n]o appeal was taken from this dismissal" is not correct. Defendant filed a timely notice of appeal from the June 2, 2017, order on July 3, 2017, the same date defendant filed a notice of appeal from the order entered on June 21, 2017. This court docketed the appeal as No. 4-17-0563. On August 2, 2017, this court consolidated defendant's two appeals, Nos. 4-17-0526 and 4-17-0563.

¶ 15

Since OSAD's motion to withdraw as counsel focused solely on the trial court's dismissal of defendant's postconviction petition filed on June 19, 2017, and did not address the court's ruling regarding the pleading defendant filed on May 30, 2017, we deny OSAD's motion without prejudice.

¶ 16

III. CONCLUSION

¶ 17 For the reasons stated, we deny without prejudice OSAD's motion to withdraw as counsel. If OSAD finds no colorable claim of error can be made as to the trial court's ruling on June 2, 2017, as well as the court's ruling on June 21, 2017, then OSAD may file a new motion to withdraw. If a new motion is not filed within 28 days, this court will reestablish the briefing schedule.

¶ 18 Motion denied without prejudice.