THIRD DIVISION
October 24, 2012

No. 1-10-2081

IN THE
APPELLATE COURT OF ILLINOIS
FIRST JUDICIAL DISTRICT

THE PEOPLE OF THE STATE OF ILLINOIS,	)	Appeal from the
	)	Circuit Court of
Plaintiff-Appellee,	)	Cook County.
	)	
v.	)	No. 86 CR 10969
	)	
CLARENCE TROTTER,	)	Honorable
	)	Vincent M. Gaughan,
Defendant-Appellant.	)	Judge Presiding.

JUSTICE STEELE delivered the judgment of the court.
Justices Neville and Sterba concurred in the judgment.

O R D E R

¶ 1 *Held*: Where defendant has not met the cause and prejudice test, the trial court did not err in denying him leave to file a successive postconviction petition; we affirm.

¶ 2 Defendant Clarence Trotter appeals from an order of the circuit court denying him leave to file a successive *pro se* petition for relief under the Post-Conviction Hearing Act (Act) (725 ILCS 5/122-1 *et seq*. (West 2010)). On appeal, defendant contends that he sufficiently demonstrated cause and prejudice to file his successive petition, which alleged that the State

violated *Brady v. Maryland*, 373 U.S. 83 (1963), when it failed to disclose that, in exchange for the testimony of one State's witness (Charles Coker), it dismissed one of his pending criminal cases and deemed another case as time served. We affirm.

¶ 3 Defendant, Michael Tillman, and Steven Bell were charged with murder and other related crimes. Defendant, who was tried separately from Tillman and Bell, is the only defendant involved in the instant appeal. Following a 1994 bench trial,[1] defendant was convicted of murder, aggravated kidnaping, and residential burglary in connection with the 1986 death of Betty Howard (Betty). He was sentenced to natural life imprisonment for murder, and two concurrent 15-year terms on the aggravated kidnaping and residential burglary charges.

¶ 4 The testimony of the State's witnesses revealed the following events. On July 20, 1986, when Betty failed to appear at the park with her two-year-old son (Myron) for his birthday, her son Eddie Howard (Eddie) went to her apartment building at 2860 East 76th Street to investigate. Upon arriving at Betty's apartment building, he observed that her newly purchased car, a Ford Fairmont, was missing from the parking lot. When he entered her apartment, which was apartment number 5D, he saw that it had been ransacked and some electronic equipment was missing. Eddie called the police, and Officer Arnold Martines and his partner went to Betty's apartment. Martines made a missing person's report for Betty and Myron and notified other authorities.

¶ 5 Detectives Peter Dignan and Ron Buffo responded to the missing person's report, and, while Dignan was investigating Betty's apartment, Eddie's sister, Angelita Howard, arrived with Michael Tillman who lived on the ground floor and was a janitor in the building. Tillman said

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[1] This was defendant's second trial; this court reversed his initial conviction resulting from a 1988 jury trial and remanded the case for a new trial. See *People v. Trotter*, 254 Ill. App. 3d 514 (1993).

that he had been painting on the seventh floor and heard noises there. Based on Tillman's directions, several family members, Tillman, and police proceeded to apartment 7C in the building. When Dignan opened the apartment door and Buffo shined his flashlight inside, Eddie testified that Tillman screamed "hey, that's your mama." Dignan testified that when Tillman made that remark, there was "n[ot] a chance" that Tillman was in a position to see the victim's body. The police discovered the body of Betty Howard in the bedroom of apartment 7C, and Myron, who was alive, in the bathroom. In processing the crime scene, police recovered two Coke cans, which ultimately revealed a fingerprint that matched defendant.

¶ 6 Charles Coker testified that he had a pending unlawful use of a weapon (UUW) case, no one made him any promises in exchange for his testimony against defendant, and he did not have any belief or hope that the prosecutor would do anything for him in exchange for his cooperation. Coker and Boris Flowers, who were members of the Black Gangster Disciples, testified that they went to defendant's residence on July 20, 1986, and defendant gave them stolen property, a .32 caliber pistol, and a set of car keys. Defendant described the gun as "hot," meaning that someone had been shot with it, and told Flowers that he had a Ford Fairmont that was "hot" and that he "wanted to get rid of it."

¶ 7 On August 9, 1986, Coker was riding as a passenger in a Ford Fairmont that was involved in a police chase. After the car hit a wall, Coker jumped out and ran away. The next day, police picked up Coker at his house, and Coker identified defendant, who was sitting handcuffed in a room. The police also picked up Flowers at his house on August 10, and Flowers gave police the gun that he obtained from defendant on July 20. The bullet recovered from Betty's head was fired from the .32 caliber handgun recovered from Flowers. Defendant's residence was subsequently searched where police found stereo and camera equipment belonging to Betty.

¶ 8 After the State rested its case, the defense called several witnesses. As relevant to this appeal, Linda Spates, defendant's friend, testified that Flowers was the one who sold defendant camera and stereo equipment, and attempted to sell him additional stereo equipment and a gun. Detective Jack Hines testified that he spoke with Tillman, who stated that he thought the victim was shot, but never told police who shot her. Detective John Yucaitis also interviewed Tillman who first asserted an alibi, then implicated his brother Kenny and Steven Bell, later admitted his own involvement, and eventually recanted his entire story. Tillman never said anything about a gun or the victim's property. By stipulation, a criminologist at the police department testified that some hair samples recovered at the crime scene were consistent with Tillman and Bell, but none of the hair samples matched defendant.

¶ 9 Following closing arguments, the trial court found defendant guilty of murder, aggravated kidnaping, and residential burglary. Prior to sentencing, the trial court denied defendant's *pro se* motion for a new trial, in which he argued that his counsel was ineffective. We affirmed that judgment on direct appeal, but remanded the case to the trial court for the purpose of holding an inquiry on defendant's ineffective assistance of counsel claims pursuant to *People v. Krankel*, 102 Ill. 2d 181 (1984). See *People v. Trotter*, No. 1-95-0477 (1996) (unpublished order under Supreme Court Rule 23). On remand, the trial court denied defendant's posttrial motion, and this court affirmed. *People v. Trotter*, No. 1-98-2424 (2000) (unpublished order under Supreme Court Rule 23).

¶ 10 On June 13, 2001, defendant filed a *pro se* postconviction petition, and then filed numerous petitions supplementing his postconviction petition. Ultimately, the trial court dismissed the postconviction petition and all related petitions, and we affirmed that judgment on appeal. *People v. Trotter*, No. 1-04-0992 (2006) (unpublished order under Supreme Court Rule 23). In 2004, defendant filed a petition for relief from judgment under section 2-1401 of the

Code of Civil Procedure (735 ILCS 5/2-1401 (West 2004)), alleging error in the dismissal of his prior petitions. The State filed a motion to dismiss, which the circuit court granted after a hearing. We affirmed that judgment after granting the public defender's motion for leave to withdraw as counsel pursuant to *Pennsylvania v. Finley*, 481 U.S. 551 (1987). *People v. Trotter*, No. 1-04-3492 (2006) (unpublished order under Supreme Court Rule 23). In 2007, defendant filed a "motion to put post-conviction petition back on call," which the trial court denied. We affirmed that judgment after granting the public defender's motion for leave to withdraw as counsel pursuant to *Pennsylvania v. Finley*, 481 U.S. 551 (1987). *People v. Trotter*, No. 1-08-0224 (2009) (unpublished order under Supreme Court Rule 23).

¶ 11 On February 5, 2010, defendant filed the instant successive *pro se* petition under the Act, alleging, in pertinent part, that the State withheld evidence of Coker's criminal background and that he received consideration for his testimony, in violation of *Brady*. In support of his petition, defendant attached a memo from investigator Monte Dawson. The memo stated that in October 2009, Dawson met with Coker and asked him whether he was promised anything by the State's Attorney's Office in exchange for his testimony against defendant. Coker responded that, in exchange for his testimony, the State dismissed one of his cases and a second was deemed time served.

¶ 12 On March 26, 2010, the circuit court denied defendant leave to file the instant petition, finding that he failed to demonstrate cause and prejudice. The court found that Dawson's memo was not notarized, defendant failed to attach any supporting evidence that Coker had a case dismissed by the State, the evidence defendant did attach was not of such character to change the result on retrial, and defendant had not alleged facts sufficient to show that he could not have discovered these materials earlier with an exercise of due diligence.

¶ 13 On appeal, defendant contends that his successive petition should advance to the second stage of postconviction proceedings because newly discovered evidence arguably shows that the State, in violation of *Brady*, failed to disclose to the defense that, in exchange for Coker's testimony implicating defendant, it dismissed one of Coker's pending criminal cases and deemed another case as time served. In addition, defendant maintains that he established an arguable basis of cause and prejudice sufficient to be granted leave to file the successive postconviction petition.

¶ 14 We will review *de novo* the trial court's denial of leave to file defendant's successive post-conviction petition. *People v. Gillespie*, 407 Ill. App. 3d 113, 124 (2010); see also *People v. Green*, 2012 IL App (4th) 101034, ¶ 30.

¶ 15 The Act generally limits a defendant to filing one petition. 725 ILCS 5/122-3 (West 2010). However, a successive postconviction petition may be filed if it satisfies the cause and prejudice test articulated in section 122-1(f) of the Act. 725 ILCS 5/122-1(f) (West 2010). Defendant's representation that a mere "gist" or "arguable" claim of cause and prejudice is sufficient to obtain leave to file a successive petition has been expressly rejected by the Illinois Supreme Court in *People v. Walter Edwards*, 2012 IL 111711, ¶¶ 25, 29. The supreme court held that a successive postconviction petition must be evaluated differently than a first-stage proceeding in an initial petition. *Id*. at ¶ 25. The supreme court relied on the language of the Act, the legislative history of the Act, and on "the well-settled rule that successive post-conviction petitions are disfavored by Illinois courts." *Id*. at ¶¶ 26-29. In accord with the supreme court's holding, this court found that a defendant must meet a "more exacting" or "substantial" showing of cause and prejudice to be granted leave to file a successive post-conviction petition. *People v. Wayne Edwards*, 2012 IL App (1st) 091651, ¶¶ 22, 32.

¶ 16 Both cause and prejudice must be established for each specific claim which defendant seeks to raise in a successive petition. *People v. Gutierrez*, 2011 IL App (1st) 093499, ¶ 12 (citing *People v. Pitsonbarger*, 205 Ill. 2d 444, 463 (2002)). Cause is statutorily defined as "an objective factor that impeded his or her ability to raise a specific claim during his or her initial post-conviction proceedings." 725 ILCS 5/122-1(f)(1) (West 2010). Prejudice is defined as an error so serious that it infected the entire trial and the resulting conviction violates due process. *People v. Britt-El*, 206 Ill. 2d 331, 339 (2002). Both of these requirements must be met in order for defendant to prevail (*Pitsonbarger*, 205 Ill. 2d at 464), and here, we find that defendant has failed to do so.

¶ 17 In this case, defendant sought leave to raise a *Brady* violation in the instant successive petition. The United States Supreme Court essentially held in *Brady*, 373 U.S. at 87, that the State has an affirmative duty to disclose any evidence that is favorable to the accused and material to either guilt or punishment. A *Brady* claim requires a showing that the undisclosed evidence is favorable to the accused because it is exculpatory or impeaching, the evidence was suppressed by the State either willfully or inadvertently, and the accused was prejudiced because the evidence is material to guilt. *People v. Jarrett*, 399 Ill. App. 3d 715, 727-28 (2010). "Evidence is material if there is a reasonable probability that the result of the proceeding would have been different had the evidence been disclosed." *Id*. at 728.

¶ 18 Defendant maintains that he established "cause" for his failure to raise his *Brady* claim earlier because he did not know about Coker's deal with the State until January 2010, when he received a copy of a memo that Dawson prepared regarding the interview with Coker. However, defendant's allegations were insufficient to demonstrate cause, because they failed to show that Coker received consideration for his testimony.

¶ 19 We find our opinion in *People v. Gray*, 2011 IL App (1st) 091689, instructive to the case at bar. In *Gray*, the defendant alleged in a successive postconviction petition that he had newly discovered evidence of ineffective assistance of trial counsel. In support, the defendant attached an "affidavit" stating that the declarant spoke to a witness who told him that he did not know who killed the victim, and that the only reason he said that the defendant was the killer was "because they signed a statement saying they did it." The declarant and the witness then told the defendant's attorney that the defendant did not shoot the victim. The defendant alleged that counsel failed to inform him of the witness' statement or use it at trial. This court, however, held that the defendant failed to establish cause under section 122-1(f) of the Act because the statement, among other defects, bore no date or attestations, there was no indication that the notary verified the declarant's identity, nor was there any indication that his statement was verified upon oath or affirmation. *Id*. at ¶¶ 14-15.

¶ 20 Here, similarly to *Gray*, we question the legal effectiveness of Dawson's memo. The statement, which was not notarized or verified in any way, simply indicated that Coker told Dawson that the State dismissed one of his cases and another was deemed "time considered served." This memo does not show that Coker in fact received consideration for his testimony, particularly where no other documents were attached indicating that the pending UUW case was dismissed and another unspecified case was "deemed time considered served."

¶ 21 Furthermore, defendant cannot satisfy the prejudice prong of the test because he failed to show that the alleged error was so serious that it infected the entire trial. As stated above, the memo relied upon merely stated that Coker told the declarant, *i.e.*, Dawson, that the State dismissed one of his cases and deemed a second case "time considered served," in exchange for his testimony. Even if the State did suppress such evidence as defendant suggests, he cannot meet the *Brady* materiality test, because there is no reasonable probability that the result of the

proceeding would have been different. *E.g.*, *Green*, 2012 IL App (4th) 101034, ¶ 40. Coker's testimony was corroborated in all pertinent respects by Flowers, forensic evidence demonstrated that the bullet found in the victim's head was fired from a gun that belonged to defendant, police found electronic equipment belonging to the victim inside of defendant's apartment, and defendant's fingerprint was found on a Coke can in the apartment where the victim was killed. Additionally, the content of the memo is no more than hearsay, which, as a general rule, is insufficient to support a claim. *Id*. at ¶ 16. We thus conclude that defendant cannot establish the prejudice prong, and that the circuit court properly denied defendant leave to file his successive petition.

¶ 22 For the foregoing reasons, we affirm the judgment of the circuit court of Cook County.

¶ 23 Affirmed.