

**NOTICE**

The text of this order may be changed or corrected prior to the time for filing of a Petition for Rehearing or the disposition of the same.

No. 1-16-1247

Order filed July 16, 2018

FIRST DIVISION

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IN THE  
APPELLATE COURT OF ILLINOIS  
FIRST DISTRICT

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THE PEOPLE OF THE STATE OF ILLINOIS,

Plaintiff-Appellee,

v.

ROBERT CURRY,

Defendant-Appellant.

) Appeal from the  
 ) Circuit Court of  
 ) Cook County.  
 )  
 ) No. 05 CR 3872  
 )  
 ) Honorable  
 ) Dennis J. Porter,  
 ) Judge Presiding.

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JUSTICE HARRIS delivered the judgment of the court.  
Presiding Justice Pierce and Justice Mikva concurred in the judgment.

**SUMMARY ORDER**

¶ 1 Defendant Robert Curry appeals from the circuit court's denial of his *pro se* motion for leave to file a successive petition for relief pursuant to the Post-Conviction Hearing Act (725 ILCS 5/122-1 *et seq.* (West 2016)).

¶ 2 Following a 2006 jury trial, defendant was found guilty of first degree murder and attempted murder. He was sentenced to concurrent terms of 50 and 15 years' imprisonment, respectively. On direct appeal, we affirmed defendant's convictions and sentences. *People v.*

(APP. # A-1)

in this cause would be frivolous. The motion was made pursuant to *Pennsylvania v. Finley*, 481 U.S. 551 (1987), and is supported by a memorandum. Copies of the motion and memorandum were sent to defendant and he was advised that he might submit any points in support of his appeal. Defendant has filed a response, repeating the claims raised in his motion for leave to file, and asserting that they have merit.

¶ 6 We have carefully examined the record in this case, counsel's memorandum, and defendant's response, and have found no issues of arguable merit to be raised in an appeal. We therefore grant the motion of the State Appellate Defender for leave to withdraw as counsel and affirm the judgment of the circuit court of Cook County.

¶ 7 This order is entered in accordance with Supreme Court Rule 23(c)(2), (4) (eff. July 1, 2011).

¶ 8 Affirmed.

IN THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS  
COUNTY DEPARTMENT, CRIMINAL DIVISION

FILED  
Judge Dennis Porter #1512  
MAR 21 2016  
DOROTHY BROWN  
CLERK OF THE CIRCUIT COURT  
OF COOK COUNTY, IL  
DEPUTY CLERK

PEOPLE OF THE STATE OF ILLINOIS, )  
Plaintiff-Respondent, ) Successive Petition for Post-Conviction Relief  
v. ) 05-CR-0387201  
ROBERT CURRY, ) Honorable Dennis J. Porter  
Defendant-Petitioner. ) Judge Presiding

ORDER

Petitioner, Robert Curry, seeks post-conviction relief from the judgment of conviction entered against him on June 12, 2006. Following trial, a jury found petitioner guilty of first-degree murder, 720 ILCS 5/9-1(a)(1) (LEXIS 2005), and attempted first-degree murder, 720 ILCS 5/8-4 (720 ILCS 5/9-1(a)(1)) (LEXIS 2005). The court sentenced petitioner to serve 50 years imprisonment in the Illinois Department of Corrections for the murder and 15 years imprisonment for the attempted murder, to run concurrently. As grounds for post-conviction relief, petitioner claims: (1) there was insufficient evidence to sustain his conviction based on the jury's answer to a special interrogatory; (2) he received ineffective assistance of appellate counsel; and (3) he received ineffective assistance of trial counsel.

BACKGROUND

The Appellate Court has recounted the facts underlying petitioner's conviction. *People v. Curry*, 2015 IL App (1st) 130009-U. Petitioner's convictions stems from his direct involvement in the murder of Cesar Fowler and attempted murder of Andre Armstrong near 4123 South Champlain Avenue in Chicago on October 12, 2004. The evidence adduced at trial was that petitioner stepped out of a blue sedan occupied by two or three other people wearing hooded

(APP. # B-1)

sweatshirts over their heads. Petitioner fired a gun in the direction of both victims, fatally striking Fowler. Armstrong identified petitioner in a photo array and lineup. A witness to the shooting, Stanton Roach, identified petitioner in a lineup. The State also introduced the prior inconsistent grand jury testimony of Sherron Adams. Adams had testified that at approximately 9:00 p.m. on the day in question he was about a block away from the shooting. A blue Buick LeSabre containing two passengers pulled up. Petitioner was seated in the passenger seat. Petitioner told Adams he could not play dice because he was "on business." The car headed down the block toward the site of the shooting and, within five minutes, Adams heard gunshots. Adams saw the same car approach at a faster pace from the direction where the gunshots had been fired. A few weeks after the shooting petitioner told Adams that he and another person were wanted in the neighborhood because they shot the victims.

Petitioner presented an alibi witness who testified that petitioner was at a baby shower for a relative of his girlfriend, Raven Echols. The State rebutted the testimony with a police investigator who testified that no witnesses placed petitioner at the baby shower.

#### PROCEDURAL HISTORY

On direct appeal, petitioner claimed there was insufficient evidence to sustain his conviction. On May 14, 2008, the Appellate Court affirmed petitioner's conviction and sentence. *People v. Curry*, No. 1-06-2092, 2008 Ill. App. LEXIS 3241 (Ill. App. May 14, 2008). Petitioner sought leave to appeal to the Illinois Supreme Court. On September 24, 2008, the Illinois Supreme Court denied petitioner's request for leave to appeal. *People v. Curry*, No. 106710, 2008 Ill. LEXIS 1185 (Ill. Sept. 24, 2008).

On June 18, 2009, petitioner, through counsel, filed an initial petition for post-conviction relief. Petitioner claimed actual innocence. On August 21, 2009, the circuit court dismissed the

petition as frivolous and patently without merit. On January 5, 2015, the Appellate Court affirmed the circuit court's decision. *People v. Curry*, 2015 IL App (1st) 130009-U. Petitioner sought leave to appeal to the Illinois Supreme Court. On May 27, 2015, the Illinois Supreme Court denied petitioner's request for leave to appeal. *People v. Curry*, No. 118871, 2015 Ill. LEXIS 717 (Ill. May 27, 2015).

On February 11, 2016, petitioner filed the instant *pro se* successive petition for post-conviction relief pursuant to 725 ILCS 5/122-1(f) (LEXIS 2016).

### ANALYSIS

The Illinois Post-Conviction Hearing Act ("Act"), 725 ILCS 5/122-1, provides a remedy for defendants who have suffered substantial violations of their constitutional rights. *People v. Hodges*, 234 Ill. 2d 1, 9 (2009). The Act normally limits petitioners to filing a single petition:

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 demonstrated cause for his or her failure to bring the claim in his or her initial post-conviction proceedings and prejudice results from that failure.

725 ILCS 5/122-1(f) (LEXIS 2015)

In adopting the "cause and prejudice test," subsection (f) codifies the holding of the Illinois Supreme Court in *People v. Pitsonbarger*, 205 Ill. 2d 444 (2002):

- (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.

725 ILCS 5/122-1(f)(1)-(2) (LEXIS 2015).

"[B]oth elements, or prongs of the cause-and-prejudice test must be satisfied in order for the defendant to prevail." *People v. Guerrero*, 2012 IL 112020, ¶ 15 (citing *Pitsonbarger*, 205 Ill. 2d at 464; *People v. Thompson*, 383 Ill. App. 3d 924, 929 (1st Dist. 2008)).

Petitioner asserts he has cause to bring the instant claims because he received ineffective assistance of post-conviction counsel. “[C]ause in this context refers to any objective factor, *external to the defense*, which impeded the petitioner’s ability to raise a specific claim in the initial post-conviction proceeding.” *People v. Pitsonbarger*, 205 Ill. 2d at 462 (emphasis added). Petitioner’s privately retained post-conviction counsel’s strategic decisions do not constitute an objective factor, external to the defense, which impeded his ability to raise any of the new claims presented in the instant petition. At best, petitioner could raise an independent claim that he received ineffective assistance of post-conviction counsel but, because there is no right to effective assistance of post-conviction counsel, such a claim would not be cognizable in the instant petition because it does not raise a constitutional question. *See People v. Csaszar*, 2013 IL App (1st) 100467; *People v. Cotto*, 2015 IL App (1st) 123489.

Even if petitioner could show cause, he does not show prejudice because the new claims he alleges post-conviction counsel was ineffective for not raising are meritless.

### **I. Sufficiency of the Evidence**

Petitioner claims the jury’s answer to a special interrogatory, that petitioner did not personally discharge a firearm during the commission of his offense, demonstrates that there was insufficient evidence to sustain his conviction. Petitioner could have raised this claim on direct appeal, but did not do so. This claim has been waived. Were this claim not waived, it is meritless because questions as to the sufficiency of evidence are not cognizable under the post-conviction hearing act since they do not present a constitutional issue. *People v. Dunn*, 52 Ill. 2d 400, 402 (1972) (citing *People v. Vail*, 46 Ill. 2d 589, 591 (1970)).

## **II. Ineffective Assistance of Appellate Counsel**

Petitioner claims he received ineffective assistance of appellate counsel where counsel did not raise a claim that he should be found not guilty based on the jury's answer to the special interrogatory. This claim is meritless because the answer to the special interrogatory was not legally inconsistent with the verdict in this case. Even if it was, “[a]ppellate counsel is not obligated to brief every conceivable issue on appeal, and it is not incompetence of counsel to refrain from raising issues which, in his or her judgment, are without merit, unless counsel's appraisal of the merits is patently wrong.” *People v. Easley*, 192 Ill. 2d 307, 329 (2000). A guilty verdict cannot be challenged on appeal on the sole basis that it is legally inconsistent with an answer to a special interrogatory. *People v. Jones*, 207 Ill. 2d 122, 133-134; *See also People v. Reed*, 396 Ill. App. 3d 636, 648 (4th Dist. 2009). Appellate counsel was not ineffective for declining to raise a meritless issue.

## **III. Ineffective Assistance of Trial Counsel**

Petitioner claims he received ineffective assistance of trial counsel where counsel did not object to the State's introduction of Sherron Adams' prior inconsistent grand jury testimony. Petitioner claims the testimony was inadmissible because Adams did not have personal knowledge of the events he described in his prior statement. In examining petitioner's claim of ineffective assistance of trial counsel, the court must follow the two-pronged test of *Strickland v. Washington*, 466 U.S. 668 (1984). Petitioner must show that counsel's representation fell below an objective standard of reasonableness, and that but for this deficiency, there is a reasonable probability that the outcome of the litigation would have been different. *Id.* at 694. “Trial counsel's decision to object to testimony is generally a matter of trial strategy that is entitled to great deference and does not amount to ineffective assistance.” *People v. Smith*, 2012 IL App

(1st) 102354, ¶ 71 (citing *People v. Fender*, 325 Ill. App. 3d 168, 177 (2001)). This claim is meritless because the underlying assertion that the testimony was inadmissible is incorrect. A prior inconsistent statement is not made inadmissible by the hearsay rule if: (a) the statement is inconsistent with testimony at the hearing or trial; (b) the witness is subject to cross-examination concerning the statement; and (c) the statement was made under oath at a trial, hearing, or other proceeding or narrates, describes, or explains an event or condition of which the witness had personal knowledge. 725 ILCS 5/115-10.1 (LEXIS 2016). Adams' testimony was admissible because it made under oath at a grand jury proceeding and described events of which Adams had personal knowledge. Trial counsel's decision whether to object was a matter of trial strategy but, even if it were not, the objection would not have changed the admissibility of the evidence.

### CONCLUSION

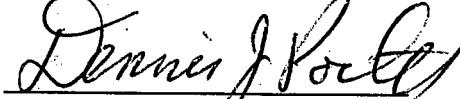
Based on the foregoing discussion, this Court finds that petitioner fails to satisfy the cause and prejudice test required by 725 ILCS 5/122-1(f). Accordingly, leave to file the instant successive post-conviction petition is hereby DENIED. Petitioner's requests to proceed *in forma pauperis* and for appointment of counsel are likewise DENIED.

ENTERED  
DENNIS PORTER - 1512

MAR 21 2016

GROTHY BROWN  
OF THE CIRCUIT COURT  
OF COOK COUNTY, IL  
CLERK

ENTERED:



Judge Dennis J. Porter  
Circuit Court of Cook County  
Criminal Division

DATED: MAR 21 2016



B-427  
WED

## SUPREME COURT OF ILLINOIS

SUPREME COURT BUILDING  
200 East Capitol Avenue  
SPRINGFIELD, ILLINOIS 62701-1721  
(217) 782-2035

Robert Curry  
Reg. No. K-61254  
Stateville Correctional Center  
P.O. Box 112  
Joliet IL 60434

FIRST DISTRICT OFFICE  
160 North LaSalle Street, 20th Floor  
Chicago, IL 60601-3103  
(312) 793-1332  
TDD: (312) 793-6185

January 31, 2019

In re: People State of Illinois, respondent, v. Robert Curry, petitioner.  
Leave to appeal, Appellate Court, First District.  
123927

The Supreme Court today DENIED the Petition for Leave to Appeal in the above entitled cause.

The mandate of this Court will issue to the Appellate Court on 03/07/2019.

Very truly yours,

*Carolyn Taft Gosboll*

Clerk of the Supreme Court

(APP. # C)

**Additional material  
from this filing is  
available in the  
Clerk's Office.**