



APPENDIX B

SUPREME COURT OF ILLINOIS

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March 24, 2021

In re: People State of Illinois, respondent, v. Carnell Fitzpatrick,
petitioner. Leave to appeal, Appellate Court, First District.
126810

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 04/28/2021.

Very truly yours,

Carolyn Taft Gosboll

Clerk of the Supreme Court

No. 1-19-0009

Second Division

IN THE
APPELLATE COURT OF ILLINOIS
FIRST DISTRICT

THE PEOPLE OF THE STATE OF ILLINOIS,) Appeal from the
Plaintiff-Appellee,) Circuit Court of
v.) Cook County.
CARNELL FITZPATRICK,)
Defendant-Appellant.) No. 99 CR 12150
) Honorable
) Carol M. Howard,
) Judge, presiding.

JUSTICE PUCINSKI delivered the judgment of the court.
Presiding Justice Fitzgerald Smith and Justice Cobbs concurred in the judgment.

SUMMARY ORDER

¶ 1. Defendant Carnell Fitzpatrick appeals from the dismissal of his *pro se* "Amended Petition for Relief from Judgment," which he filed pursuant to section 2-1401(f) of the Code of Civil Procedure. 735 ILCS 5/2-1401(f) (West 2018).

¶2 Following a 2001 jury trial, at which the State presented evidence that defendant fatally struck a bicyclist with his vehicle in 1999, defendant was convicted of first degree murder and sentenced to 45 years in prison. We affirmed defendant's conviction and sentence on direct appeal.

People v. Fitzpatrick, No. 1-02-0977 (2004) (unpublished order under Supreme Court Rule 23).

¶ 3. In 2005, defendant filed a *pro se* postconviction petition under the Post-Conviction Hearing Act (Act) (725 ILCS 5/122-1 *et seq.* (West 2004)). In the petition, defendant alleged, *inter alia*, that he was denied a fair trial and meaningful appellate review because the trial judge and appellate court were biased and partial. The trial judge recused himself and the case was transferred to another circuit court judge. On July 1, 2005, the circuit court summarily dismissed the petition as frivolous and patently without merit. On August 11, 2005, defendant filed a *pro se* notice of appeal. On August 19, 2005, the late notice of appeal was denied.

¶ 4. On April 21, 2006, defendant filed a *pro se* section 2-1401 petition. In the petition, defendant contended that the July 1, 2005, summary dismissal of his initial *pro se* postconviction petition was void because his claim of judicial bias had merit where the trial judge recused himself. Defendant also contended that the denial of his notice of appeal from the summary dismissal was void. He argued that the notice was timely filed and should not have been treated as a late notice of appeal, and that the notice had not been transmitted to the appellate court clerk within five days of its receipt. In support of his claims, defendant attached an affidavit executed by his mother wherein she averred that defendant was never notified that his notice of appeal had been denied, that she inquired about the status of the notice at the "Clerk's office" in December 2005, and that no one there could provide her with an explanation for the denial.

¶ 5. On December 13, 2011, defendant filed a *pro se* "Motion to Put 2-1401 Petition Back on Call," asserting that there had not yet been a ruling on the petition.

¶ 6. In 2014, defendant filed a motion for leave to file a successive postconviction petition under the Act and an accompanying petition. The circuit court denied leave to file, finding defendant had failed to raise a colorable claim of actual innocence or satisfy the cause and

prejudice test. On appeal, we granted counsel's motion to withdraw and affirmed. *People v. Fitzpatrick*, No. 1-16-2326 (2018) (unpublished summary order under Supreme Court Rule 23(c)).

¶ 7 On June 10, 2016, the State brought the section 2-1401 petition to the circuit court's attention and the attorney defendant had retained to represent him in the postconviction proceedings agreed to represent him on the section 2-1401 petition as well. After a series of continuances, defendant's attorney withdrew from the case on March 22, 2017.

¶ 8 On March 28, 2018, defendant filed the *pro se* pleading at issue here, titled "Amended Petition for Relief from Judgment," incorporating and adopting the claims raised in his initial section 2-1401 petition. The State filed a motion to dismiss, and defendant filed a *pro se* reply.

¶ 9 Following a hearing, at which defendant appeared *pro se*, the circuit court granted the State's motion to dismiss. In a written order dated November 5, 2018, the circuit court explained that defendant's voidness claims were not cognizable under section 2-1401 because he had not argued that the judgment against him was obtained without personal or subject matter jurisdiction or that his conviction for first degree murder rested on a facially unconstitutional statute. Defendant filed a timely notice of appeal on December 4, 2018.

¶ 10 The Office of the State Appellate Defender, which was appointed to represent defendant on appeal, has filed a motion in this court requesting leave to withdraw based on the conclusion that an appeal 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.

¶ 11 Defendant has filed a response, stating that due to a COVID-19 "quarantine/lockdown," he has been unable to access the prison law library and therefore has been impaired in his ability to answer counsel's *Finley* motion. Nevertheless, he argues that counsel's motion does not adequately present the claims he raised in his section 2-1401 petition, which he maintains have merit. He asserts that counsel, rather than present his claims, "has chosen to circumnavigate most or all of [his] issues by offering arguments in favor of the State" and "erroneously posits that [his] claims fail." Defendant requests that this court deny the *Finley* motion and appoint an attorney other than the Office of the State Appellate Defender to prepare his appeal. He further asks that, in light of COVID-19, any filing deadlines applicable to him be extended by at least six months.

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

¶ 13 This order is entered in accordance with Supreme Court Rule 23(c)(2), (4) (eff. Apr. 1, 2018).

¶ 14 Affirmed.