

NO. 4-21-0459

IN THE APPELLATE COURT  
OF ILLINOIS

FOURTH DISTRICT

THE PEOPLE OF THE STATE OF ILLINOIS,	)	Appeal from the
Plaintiff-Appellee,	)	Circuit Court of
v.	)	Macon County
CORNELIUS L. JONES,	)	No. 08CF1053
Defendant-Appellant.	)	
	)	Honorable
	)	Jeffrey S. Geisler,
	)	Judge Presiding.

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JUSTICE TURNER delivered the judgment of the court.  
Presiding Justice Knecht and Justice Steigmann concurred in the judgment.

**SUMMARY ORDER**

In July 2021, the Macon County circuit court entered an order denying the third motion for leave to file a successive postconviction petition filed *pro se* by defendant, Cornelius L. Jones. Defendant appealed the circuit court's denial, and the Office of the State Appellate Defender (OSAD) was appointed to represent defendant. On appeal, OSAD moves to withdraw its representation of defendant, contending "an appeal in this case would be without arguable merit." This court granted defendant leave to file a response to OSAD's motion on or before April 4, 2022. Defendant filed a response, and the State filed a brief agreeing with OSAD's assessment of defendant's motion for leave to file a successive postconviction petition. We have reviewed the record and agree with OSAD and the State defendant's appeal does not present a potentially meritorious claim.

In *Pennsylvania v. Finley*, 481 U.S. 551, 557 (1987), the United States Supreme Court addressed the withdrawal of counsel in collateral postconviction proceedings and held the

FILED  
June 23, 2022  
Carla Bender  
4<sup>th</sup> District Appellate  
Court, IL

United States Constitution does not require the full protection of *Anders v. California*, 386 U.S. 738 (1967), with such motions. The Court noted the respondent did not present a due-process violation when her counsel withdrew because her state right to counsel had been satisfied. *Finley*, 481 U.S. at 558. Thus, state law dictates counsel's performance in a postconviction proceeding. The Illinois Supreme Court has held that, in a postconviction proceeding, the Post-Conviction Hearing Act (Postconviction Act) (725 ILCS 5/122-1 *et seq.* (West 2020)) entitles a defendant to reasonable representation. *People v. Guest*, 166 Ill. 2d 381, 412, 655 N.E.2d 873, 887 (1995).

In *People v. McKenney*, 255 Ill. App. 3d 644, 646, 627 N.E.2d 715, 717 (1994), the Second District granted appellate counsel's motion to withdraw as counsel on an appeal from a postconviction petition, finding counsel's representation was reasonable. There, the motion stated counsel had reviewed the record and found no issue that would merit relief. The motion also provided the procedural history of the case and the issues raised in the defendant's petition. *McKenney*, 255 Ill. App. 3d at 645, 627 N.E.2d at 716. Here, OSAD's motion complies with the state law requirements for withdrawing as counsel in postconviction proceedings.

When the circuit court has not held an evidentiary hearing, this court reviews *de novo* the denial of a defendant's motion for leave to file a successive postconviction petition. See *People v. Gillespie*, 407 Ill. App. 3d 113, 124, 941 N.E.2d 441, 452 (2010). Our supreme court "has identified two bases upon which the bar against successive petitions will be relaxed." *People v. Sanders*, 2016 IL 118123, ¶ 24, 47 N.E.3d 237. The first basis is contained in section 122-1(f) of the Postconviction Act (725 ILCS 5/122-1(f) (West 2020)), which provides the following:

"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 demonstrates cause for his or her failure to bring the claim in his or her initial post-conviction proceedings and prejudice results from that failure. For purposes of this subsection (f): (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.”

Thus, for a defendant to obtain leave to file a successive postconviction petition, both prongs of the cause-and-prejudice test must be satisfied. *People v. Guerrero*, 2012 IL 112020, ¶ 15, 963 N.E.2d 909. With a motion for leave to file a successive postconviction petition, the court is just conducting “a preliminary screening to determine whether defendant’s *pro se* motion for leave to file a successive postconviction petition adequately alleges facts demonstrating cause and prejudice.” *People v. Bailey*, 2017 IL 121450, ¶ 24, 102 N.E.3d 114. The court is only to ascertain “whether defendant has made a *prima facie* showing of cause and prejudice.” *Bailey*, 2017 IL 121450, ¶ 24. If the defendant did so, the court grants the defendant leave to file the successive postconviction petition. *Bailey*, 2017 IL 121450, ¶ 24.

The second basis is the fundamental miscarriage of justice exception, which requires the petitioner to demonstrate actual innocence. *Sanders*, 2016 IL 118123, ¶ 24. Along with his third motion for leave to file a successive postconviction petition, defendant filed a proposed successive postconviction petition raising three claims, all of which were based on the supreme court’s decision in *People v. Ringland*, 2017 IL 119484, 89 N.E.3d 735. Specifically, defendant argued his due process rights were violated because he was stopped and arrested by

Steven Gudgel, who was an investigator with the Sangamon County State's Attorney's Office and unauthorized to make stops and arrests. He further argued ineffective assistance of trial and appellate counsel for not raising the aforementioned issue. Defendant did not raise an actual innocence claim in his proposed successive postconviction petition. Thus, only the cause-and-prejudice test is at issue in this appeal.

As to cause, the supreme court's decision in *Ringland* was filed on June 29, 2017. Defendant's second motion for leave to file a successive postconviction petition was filed in October 2018. Thus, defendant could have raised his arguments based on *Ringland* at the time of his second motion for leave to file a successive postconviction petition. "Claims that were decided on direct appeal or in an earlier postconviction proceeding are generally barred by the doctrine of *res judicata*, and claims that could have been, but were not, raised in an earlier proceeding are forfeited." *People v. Daniels*, 2020 IL App (1st) 171738, ¶ 21, 163 N.E.3d 1216. Defendant did not identify an objective factor that prevented him from raising the arguments based on *Ringland* with his 2018 motion. Thus, defendant has not made a *prima facie* showing of cause.

Moreover, even if defendant had made a *prima facie* showing of cause, he did not make a *prima facie* showing of prejudice. Defendant raised an almost identical issue in his May 2020 petition brought under section 2-1401(f) of the Code of Civil Procedure (735 ILCS 5/2-1401(f) (West 2020)). There, defendant argued Gudgel lacked the authority to conduct a traffic stop, resulting in the traffic stop being unconstitutional and the evidence discovered from the subsequent search inadmissible under *Ringland*. On appeal, this court granted OSAD's motion to withdraw as counsel and affirmed the circuit court's dismissal of defendant's section 2-1401 petition. *People v. Jones*, No. 4-20-0520 (Jan. 28, 2022) (unpublished summary order).

under Illinois Supreme Court Rule 23(c)), *as modified on denial of reh'g* (Feb. 22, 2022), *pet. for leave to appeal pending*, No. 128369 (filed Apr. 8, 2022). In reaching that conclusion, we found Gudgel's actions were distinguishable from the special investigator's in *Ringland* because Gudgel did not act independently like the special investigator in *Ringland*. *Jones*, No. 4-20-0520, slip order at 3-4. We noted the *Ringland* court distinguished the special investigator's conduct in that case from "cases such as *People v. Alcala*, 248 Ill. App. 3d 411[, 618 N.E.2d 497] (1993), and *People v. Sequoia Books, Inc.*, 150 Ill. App. 3d 211[, 501 N.E.2d 856] (1986), where in each case a State's Attorney special investigator truly acted in concert with local law enforcement officials after it was learned that a specific crime had been, or was about to be, committed." *Ringland*, 2017 IL 119484, ¶ 30.

In *Ringland*, 2017 IL 119484, ¶ 4, the special investigator had conducted, without law enforcement involvement, traffic stops against several defendants, which resulted in the discovery of a controlled substance and felony charges against the defendants for possessing the controlled substances. The supreme court affirmed the appellate court's judgment, which had affirmed the circuit court's granting of the defendants' motions to quash arrest and suppress evidence. *Ringland*, 2017 IL 119484, ¶ 2. The appellate court had concluded the special investigator had exceeded the scope of section 3-9005(b) of the Counties Code (55 ILCS 5/3-9005(b) (West 2012)), which rendered the special investigator's traffic stops and arrests unlawful. *Ringland*, 2017 IL 119484, ¶ 9. The supreme court found the special investigator's common-law duty to investigate suspected illegal activity did not cover the situation before it and, absent that duty, the special investigator's conduct fell outside of the scope of section 3-9005(b). *Ringland*, 2017 IL 119484, ¶ 35. The state's attorney's common-law duty to investigate suspected illegal activity applies when law enforcement agencies have inadequately

dealt with the investigation or any law enforcement agency has asked for assistance. *Ringland*, 2017 IL 119484, ¶ 33.

Here, defendant's supporting evidence for his proposed successive postconviction petition shows it was an Illinois State Police trooper who made the stop of the vehicle in which defendant was riding. While Gudgel kept the vehicle secured, it was the trooper who took defendant and the vehicle's driver into custody. Moreover, while Gudgel observed possible evidence in the vehicle, he was not the person who searched the vehicle. Contrary to defendant's allegations in his proposed successive postconviction petition and unlike the special investigator in *Ringland*, Gudgel was not the person who made the traffic stop and arrested defendant. Additionally, to the extent defendant suggests Gudgel's conduct of locating the wanted vehicle and reporting the vehicle's location to law enforcement was outside his authority as a special investigator, the supporting evidence indicates Gudgel acted on a general request for assistance by a law enforcement agency, which would render his conduct within his common-law duty to investigate suspected criminal activity. Even if the conduct was unauthorized, we note *Ringland* does not suggest such conduct would invalidate a subsequent stop, arrest, and search by law enforcement.

Therefore, in accordance with Illinois Supreme Court Rule 23(c)(2), (c)(4) (eff. Jan. 1, 2021), we allow OSAD's motion to withdraw and affirm the Macon County circuit court's judgment.

Affirmed.



STATE OF ILLINOIS  
**APPELLATE COURT**  
FOURTH DISTRICT  
201 W. MONROE STREET  
SPRINGFIELD, IL 62704

CLERK OF THE COURT  
(217) 782-2586

RESEARCH DIRECTOR  
(217) 782-3528

4-21-0459

**FILED**  
July 25, 2022  
APPELLATE  
COURT CLERK

THE PEOPLE OF THE STATE OF  
ILLINOIS,  
Plaintiff-Appellee,  
v.  
CORNELIUS L. JONES,  
Defendant-Appellant.

Macon County  
Case No.: 08CF1053

O R D E R

This cause coming to be heard with proper notice having been served, and the Court  
being fully advised in the premises:

IT IS ORDERED that appellant's Motion to Reconsider is denied.

Order entered by the court.

IN THE CIRCUIT COURT OF THE SIXTH JUDICIAL CIRCUIT  
MACON COUNTY, ILLINOIS

**FILED**

People of the State of Illinois

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JUL 23 2021

Plaintiff,

**SHERRY A. DOTY**  
**CIRCUIT CLERK**

vs.

No. 08-CF-1053

Cornelius L. Jones

Defendant

ORDER DENYING LEAVE TO FILE SUCCESSIVE POST-CONVICTION PETITION

1. That on January 15, 2005 the defendant, Cornelius L. Jones was convicted of first degree murder.
2. On February 23, 2009 the defendant was sentenced to 60 years in prison.
3. That on October 28, 2009 a mandate was issued by the appellate court affirming the trial court.
4. On March 18, 2011 the defendant filed a post-conviction petition alleging ineffective assistance.
5. On March 31, 2011 the trial court dismissed the post-conviction petition.
6. That the appellate court affirmed the trial court dismissal of the post-conviction petition.
7. That on November 10, 2014 the petitioner asked for leave to file a successive post-conviction petition for ineffective assistance.
8. That on December 10, 2014, the trial court dismissed the motion for leave to file a successive post-conviction petition.
9. The appellate court affirmed the trial court's dismissal in February of 2017.
10. On October 10, 2018, the petitioner asked for leave to file a successive post-conviction petition alleging ineffectiveness for failing to interview the co-defendant Dorian Harris.

11. On January 2, 2019 the Court denied the Petition for Leave to File a Successive Post-Conviction Petition.
12. On May 12, 2020 the Defendant filed a Petition to Vacate Judgment under 735 ILCS 5/2-1401.
13. On June 25, 2020 the Court dismissed the petition.
14. On January 26, 2020 the Appellate Court affirmed the dismissal of the Motion Dismissing Leave to File a Successive Post-Conviction in October 2018.
15. On May 19, 2021 the Defendant filed a Motion for Leave to File a Successive Post-Conviction Petition alleging State's Attorney Investigators do not have the authority to conduct stops or make arrests and his attorney was ineffective for not filing a Motion to Suppress.
16. The Court has reviewed the record and the petition along with the affidavits and the case law attached.
17. The Post-Conviction Act "generally contemplates the filing of only one post-conviction petition." People v. Ortiz, 235 Ill.2d 319, 328 (2009).
18. For a Defendant to obtain leave to file a successive petition, both prongs of the cause and prejudice test must be satisfied.
19. A review of the records shows defense counsel did file a Motion to Suppress that was denied December 3, 2008.
20. The evidence further established that State Trooper Maro made the actual traffic stop.
21. That Special Investigator Gudgel did follow the vehicle that Cornelius Jones was a passenger in and notified Sangamon County Dispatch.
22. Investigator Gudgel did not stop the vehicle, search the vehicle or arrest the Defendant.
23. The facts of this case are completely different than the Ringland case 2017 IL 119484 where the investigator conducted the traffic stops.
24. The Court does not find the Defendant has established cause or prejudice or that fundamental fairness requires leave to grant a successive petition on any of the issues raised.



## SUPREME COURT OF ILLINOIS

SUPREME COURT BUILDING  
200 East Capitol Avenue  
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Cornelius L Jones  
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P.O. Box 1000  
Menard IL 62259

FIRST DISTRICT OFFICE  
160 North LaSalle Street, 20th Floor  
Chicago, IL 60601-3103  
(312) 793-1332  
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November 30, 2022

In re: People State of Illinois, respondent, v. Cornelius L. Jones,  
petitioner. Leave to appeal, Appellate Court, Fourth District.  
128803

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 01/04/2023.

Very truly yours,

*Cynthia A. Grant*

Clerk of the Supreme Court

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