

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.

~~EX-105~~ v C 11
APPENDIX

No. 1-21-0126

Order filed September 21, 2022

Third 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.
ANTHONY ALLEN,)) No. 91 CR 10926
Defendant-Appellant.)) Honorable
) Thomas Hennelly,
) Judge, presiding.

JUSTICE GORDON delivered the judgment of the court.
Justices Reyes and Burke concurred in the judgment.

SUMMARY ORDER

¶ 1 Defendant Anthony Allen appeals from the circuit court's order denying him leave to file a *pro se* successive petition for relief under the Post-Conviction Hearing Act (Act) (725 ILCS 5/122-1 *et seq.* (West Supp. 2019)).

¶ 2 Following a 1993 jury trial, defendant was found guilty of armed robbery and two counts of first degree murder and sentenced to concurrent prison terms of natural life for first degree murder and 30 years for armed robbery. We affirmed on direct appeal. *People v. Allen*, No. 1-93-2453 (1995) (unpublished order under Illinois Supreme Court Rule 23).

¶ 3 Subsequently, defendant filed several unsuccessful collateral challenges. In each case, we granted appointed counsel leave to withdraw and affirmed. *People v. Allen*, No. 1-97-1287 (1998) (unpublished order under Illinois Supreme Court Rule 23) (affirming summary dismissal of initial postconviction petition); No. 1-09-0274 (2010) (unpublished order under Illinois Supreme Court Rule 23) (affirming denial of petition for relief from judgment); No. 1-12-0491 (2013) (unpublished summary order under Illinois Supreme Court Rule 23(c)) (affirming denial of leave to file *pro se* successive postconviction petition); No. 1-15-3023 (2016) (unpublished summary order under Illinois Supreme Court Rule 23(c)) (affirming denial of petition for writ of *habeas corpus*); No. 1-16-2797 (2019) (unpublished summary order under Illinois Supreme Court Rule 23(c)) (affirming denial of second petition for writ of *habeas corpus*).

¶ 4 On December 16, 2019, defendant filed the instant *pro se* “Petition for Post-Conviction,” alleging trial counsel provided ineffective assistance by failing to challenge the “jury instruction for [his] first degree murder verdict forms.” He claimed that during the jury instructions conference, the State nol-prossed the counts that alleged knowing or intentional first degree murder and proceeded solely on a charge of felony murder, “which removed from this case any mental state.” Defendant also claimed counsel on direct appeal provided ineffective assistance by failing to raise this claim.

¶ 5 On February 14, 2020, the circuit court denied defendant leave to file a successive post-conviction petition.

¶ 6 Defendant timely filed a *pro se* motion to reconsider, reiterating his ineffective assistance claim. Defendant also argued that he was denied the rights to counsel, self-representation, “public trial,” and trial by jury based on a “defective reasonable doubt instruction.” He further argued that

providing the jury with a general verdict form did not reveal whether “the jury actually found [him] guilty of intentional or knowing murders or only felony murder,” and providing a specific verdict form “would have made the jury’s factual findings clear.”

¶ 7 On October 16, 2020, the circuit court denied defendant’s motion to reconsider.

¶ 8 On February 17, 2021, we granted defendant’s motion for leave to file his late notice of appeal, and appointed the Office of the State Appellate Defender to represent him. Under *Pennsylvania v. Finley*, 481 U.S. 551 (1987), defendant’s counsel has filed a motion requesting leave to withdraw as counsel based on the conclusion that an appeal in this case would lack arguable merit. Counsel has informed defendant of this conclusion and has filed a memorandum in support of the motion. Counsel’s memorandum identifies arguments that defendant could potentially assert on appeal and explains why the arguments are without merit.

¶ 9 Copies of counsel’s motion and memorandum were mailed to defendant. Defendant was also informed that he may file with this court a written explanation of why he thinks there are meritorious issues in his appeal. Defendant has filed a response.

¶ 10 In response, defendant argues that appointed counsel did not adequately consider the potential issues on appeal. Defendant reiterates the ineffective assistance claim raised in his petition. According to defendant, appointed counsel’s conclusion that defendant’s claims are forfeited is unfounded, as defendant’s sentence was entered without “statutory authorization,” and was therefore void and could be attacked at any time. He explains that he received a natural life sentence based on conduct for which he was “acquitted,” because his counts for “intentional/knowing murder” were nol-prossed during the jury instructions conference.

Defendant claims this court “was not aware that the jurors [were] never told” that the counts for knowing and intentional murder were nol-prossed.

¶ 11 To comply with *Finley*, we have carefully examined the record, counsel’s motion and memorandum, and defendant’s response. From our review, we agree with counsel and conclude that there are no issues of arguable merit on appeal. We, therefore, grant counsel’s motion for leave to withdraw as appointed counsel on appeal.

¶ 12 The judgment of the circuit court of Cook County is affirmed in accordance with Supreme Court Rule 23(c)(2), (4) (eff. Jan. 1, 2021).

¶ 13 Affirmed.



EXHIBIT
APPENDIX

11
"D"

OFFICE OF THE STATE APPELLATE DEFENDER
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Chicago, Illinois 60601

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February 18, 2022

MICHAEL J. PELLETIER
STATE APPELLATE DEFENDER

PATRICIA MYSZA
DEPUTY DEFENDER

SHAWN O'TOOLE
ASSISTANT DEPUTY DEFENDER

ERIC E. CASTANEDA
ASSISTANT APPELLATE DEFENDER

Mr. Anthony Allen
Register No. B43715
Hill Correctional Center
P. O. Box 1700
Galesburg, IL 61402

RE: *People v. Anthony Allen*
Cook County No. 91 CR 10926 (02)
Appellate Court No. 1-21-0126

Dear Mr. Allen:

As we discussed over the phone on February 18, 2022, I am attaching some pages from your record on appeal. Please find the following:

- 1) The court's sentencing order (*mittimus*) showing that you were convicted under section 9-1-A(3). (C 58)
- 2) The First Degree Murder Charge based on felony murder—Count 3. (C 45)
- 3) The jury instructions given to jury. Instructions 12 and 13 contained on pages (CI 80 & CI 81) instruct the jury on first degree murder based on felony murder count.
- 4) Transcripts of the judge giving the jury the instructions. The judge instructs the jury on first degree murder based on felony murder on pages (R. 859-61).
- 5) The guilty verdict forms signed by the jury. (CI 99-101)
- 6) The transcript of the State *nolle prossing* counts 1 and 2 and only proceeding on Count 3—the felony murder count. (R. 18)
- 7) And, the transcript of the jury arriving at their guilty verdict. (R. 876)

As we also discussed, I will be filing a motion to withdraw from the appeal by the end of next week. Please contact me with any questions and/or concerns you may have.

1 AF 9

Sincerely,



ERIC E. CASTANEDA
Assistant Appellate Defender

Encl: Transcripts and Court Filings from appeal record.

2 OF 2

No. 1-21-0126

IN THE
APPELLATE COURT OF ILLINOIS
FIRST JUDICIAL DISTRICTE-FILED
Transaction ID: 1-21-0126
File Date: 2/25/2022 10:54 AM
Thomas D. Paella
Clerk of the Appellate Court
APPELLATE COURT 1ST DISTRICT

PEOPLE OF THE STATE OF ILLINOIS,)	Appeal from the Circuit Court of Cook County, Illinois
)	
Respondent-Appellee,)	
)	No. 91 CR 10926 (02)
-vs-)	
)	
ANTHONY ALLEN,)	Honorable
)	Thomas Joseph Hennelly,
Petitioner-Appellant.)	Judge Presiding.

**MOTION FOR LEAVE TO WITHDRAW AS COUNSEL ON APPEAL
CONSISTENT WITH *PENNSYLVANIA v. FINLEY* AND PURSUANT
TO ILLINOIS LAW**

Consistent with *Pennsylvania v. Finley*, 481 U.S. 551 (1987), and pursuant to Illinois law (see *People v. Kuehner*, 2015 IL 117695, ¶¶ 15, 21 (discussing applicable Supreme Court Rules), and *People v. Meeks*, 2016 IL App (2d) 140509, ¶ 8 (discussing applicable Rules of Professional Conduct)), the Office of the State Appellate Defender moves for leave to withdraw as counsel on appeal in this case because the appeal presents no potentially meritorious issues for review.

In support of this motion Eric E. Castañeda, Assistant Appellate Defender, states:

1. Appellant, Anthony Allen, was sentenced to natural life for two counts of first degree murder and armed robbery on October 16, 2020. Appellant is currently incarcerated. His conviction and sentence were affirmed on direct appeal in appellate court number (1-93-2453).

1086

degree murder charge based on the felony-murder rule. (CI. 100-01) The *mittimus* indicates that Allen was convicted for first-degree murder under the felony-murder charge pursuant to section 9-1(a)(3). (C. 58). *See People v. Bailey*, 2017 IL 121450, ¶ 24 (finding that review of a successive petition is aimed at determining whether the motion “adequately alleges facts” that make “a *prima facie* showing of cause and prejudice.”); *People v. Pitsonbarger*, 205 Ill. 2d 444, 467 (2002) (finding that in a successive post-conviction petition, a court takes as true all of the defendant’s well-pleaded factual allegations, as well as his supporting affidavits, unless they are positively rebutted by the record of the original trial proceedings.)

The situation here is different than in *People v. Smith*, 233 Ill.2d 1, 5, 17-18 (2009), where the court found that the jury signed general verdict forms. The Illinois Supreme Court explained that, where defendants were prosecuted under intentional, knowingly, and felony-murder counts of first-degree murder, it was difficult to determine what count the jury had convicted the defendants under, which affected the death sentence determination. *Id.*; *see also People v. Bailey*, 2013 IL 113690, ¶ 57 (“We, therefore, agree with the appellate court that the trial court erred by refusing to provide the jury with separate verdict forms upon request where a general verdict would make it impossible to determine whether the jury acquitted defendant of intentional or knowing murder, when that determination had sentencing consequences for the defendant.”) Unlike in *Smith* and *Bailey*, Allen was only prosecuted under the felony-murder count and the guilty verdict forms could only specifically apply to the felony-murder count.

Notably, the need to distinguish and ascertain which specific mental state a defendant was convicted under usually pertained to the need to establish whether

independent felonious purpose" from that of the murder itself. *Morgan*, 197 Ill. 2d at 458.

Here, the armed robbery against Wilfredo Camacho properly served as the predicate felony for the felony-murder charge of Giampiero Pacini and Mara Pacini as the armed robbery had a felonious purpose independent from that of the deaths that occurred during the attempted flight. (C. 45-46) The Illinois Supreme Court has explained that escape from an armed robbery is not an element of the offense. *People v. Dennis*, 181 Ill. 2d 87, 103 (1998) However, "[a] killing that occurs during the course of an escape from [an armed robbery] is within the operation of the felony-murder rule." See *People v. Klebanowski*, 221 Ill. 2d 538, 549 (2006). This Court, in affirming Allen's conviction and sentence on direct appeal, explained:

Nothing in the armed robbery charge pertains to an allegation of driving. The murders occurred at a location completely different from that of armed robbery, and the murders occurred as a result of flight from police, not from the armed robbery itself.

* * *

It was only after the robbers fled the scene and were attempting to evade the police, that codefendant Smith proceeded through two stop lights and collided with the Pancini's car...

(C. 79-80) Thus, the armed robbery offense here properly served as the predicate felony for the felony-murder charge as it had an independent felonious purpose from the murder.

Further, here, the instructions given by the court, when read together, adequately apprised the jury that it was required to find that Allen, or one for whose conduct he was legally responsible, acted with the felonious purpose of committing an armed robbery against Wilfredo Camacho that was independent of the felonious purpose for murder. (CI. 81, 83) The State was required to prove a

The Grand Jurors chosen, selected, and sworn, in and for the County of Cook, in the State of Illinois, in the name and by the authority of the People of the State of Illinois, upon their oaths aforesaid present that on or about APRIL 13, 1991 at and within the County of Cook

KEVIN SMITH
ANTHONY ALLEN✓
JARVIS REED
AMON FOX

APPENDIX

F

committed the offense of ARMED ROBBERY

in that THEY, WHILE ARMED WITH A DANGEROUS WEAPON, TO WIT:

A HANDGUN, TOOK PROPERTY, TO WIT: UNITED STATES CURRENCY AND A 6-PACK OF BEER FROM WILFREDO CAMACHO'S PRESENCE BY THREATENING THE IMMINENT USE OF FORCE,

IN VIOLATION OF CHAPTER 38, SECTION 18-2-A OF THE ILLINOIS REVISED STATUTES 1989 AS

AMENDED, AND

contrary to the Statute, and against the peace and dignity of the same People of the State of Illinois.

Charge ID Code 2150

AURELIA PUCINSKI, CLERK OF THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS

Jack Olszeg

C30

4/4

We, the jury, find the defendant, Anthony Allen, Not Guilty of First Degree Murder of Mara Pacini.

Foreperson

I.P.I. Criminal Number 26.82
People's Instruction No. 1

C 84

CI 87

We, the jury, find the defendant, Anthony Allen, Not Guilty of First Degree Murder of Giampiero Pacini.

Foreperson

I.P.I. Criminal Number 26,02
People's Instruction No.

C86

CI 89

We, the jury, find the defendant, Anthony Allen, Guilty of First Degree Murder of Giampiero Pacini.

Foreperson

I.P.I. Criminal Number 26.05
People's Instruction No. 2

Spalding
Will
S.

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

PEOPLE OF THE STATE OF ILLINOIS

v.

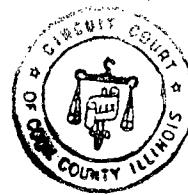
ANTHONY ALLEN

Case No. 91CR1092602

CERTIFIED REPORT OF DISPOSITION

The following disposition was rendered before the Honorable Judge THOMAS HENNELLY ON
FEBRUARY 14, 2020. THE LEAVE TO FILE SUCCESSIVE POST-CONVICTION PETITION IS
DENIED WITHOUT MERIT,

I hereby certify that the foregoing has been entered of record on the above captioned case.

Date: FEBRUARY 25, 2020
Dorothy Brown, Clerk of the Circuit Court

DOROTHY BROWN, CLERK OF THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS

December 18, 2022
APPENDIX *#B* 11

Dear Clerk Cynthia A. Grant,

On December 1, 2022, I call the appellate court to give me an update on petitioner Rehearing Petition. The Clerk told petitioner that the Rehearing Petition was denied on November 23, 2022, then I asked the Clerk, did she send petitioner a copy of the Rehearing Petition denial. The Clerk told petitioner that the Court sent it to petitioner attorney that is on the record, so petitioner told her that my attorney Eric E. Castaneda sent me a letter stating that my case has come to an end, my file is closed! (See Exhibit "1-2") Petitioner asked the Clerk to send him a copy of the Rehearing Petition denial, so that I can make my deadline for the Supreme Court, the Clerk told petitioner that I have to get that copy from my attorney unless I can have somebody come down there and pick a copy of my Rehearing denial up. Petitioner told the Clerk that my family do not live in Illinois, my family is in Arizona. Petitioner then call the appellate defender's office and asked the Clerk about petitioner Rehearing denial, she asked petition for my name, then told petitioner that she will have my attorney set up a phone call with me, but I still have not heard from either the Court or my attorney to this date about the copy of my denial on my Rehearing Petition, and that is why, my Rehearing denial is not in here from the appellate court.

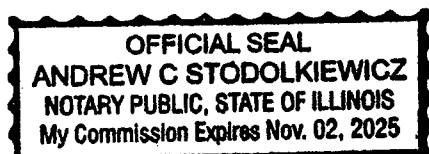
The Circuit Court did not send petitioner a copy of his Rehearing denial either, if I would not have call the Court in November 2020, I would not have know that my Rehearing Petition was denied.

DECLARATION UNDER PENALTY OF PERJURY

Pursuant to 28 USC 1746, 18 USC 1621 or 735 ILCS 5/1-109, I declare, under penalty of perjury, that I am a named party in the above action, that I have read the above documents, and that the information contained therein is true and correct to the best of my knowledge.

Date: December 18, 2022

/s/ *Anthony Allen*
Name: Anthony Allen
IDOC#: B43715
P.O.BOX 1700
Hill Correctional Center
Galesburg, IL.61402



Andy C Stodolkiewicz
12-22-2022

10F6



**OFFICE OF THE STATE APPELLATE DEFENDER
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JAMES E. CHADD
STATE APPELLATE DEFENDER

DOUGLAS R. HOFF
DEPUTY DEFENDER

BRIAN E. KOCH
ASSISTANT DEPUTY DEFENDER

ERIC E. CASTAÑEDA
ASSISTANT APPELLATE DEFENDER

September 21, 2022

Mr. Anthony Allen
Register No. B43715
Hill Correctional Center
P. O. Box 1700
Galesburg, IL 61402

RE: *People v. Anthony Allen*
Appellate Court No. 1-21-0126

Dear Mr. Allen:

Enclosed find a copy of the court's order allowing my motion to withdraw as counsel and affirming the circuit court's judgment. This means that your conviction and sentence stand. Our representation of you has come to an end and your file will be closed. However, our decision to close your case does not prevent you from appealing your case further on your own. The following pages describe the procedures necessary to urge higher courts to look at your case.

I am very sorry that there was nothing that we could do for you.

Good luck to you.

Sincerely,

A handwritten signature in black ink, appearing to read "Eric E. Castañeda".

ERIC E. CASTAÑEDA
Assistant Appellate Defender

encl: AC Decision, Packet A

2 OF 6

No. 1-21-0126
IN THE
APPELLATE COURT OF ILLINOIS
FIRST JUDICIAL DISTRICT

FILED
APPELLATE COURT 1ST DIST.

OCT 12 2022

THOMAS D. PALELLA
CLERK

People of the State of Illinois,) Appeal from the circuit Court of
Respondent-Appellee,) Cook County, Illinois
-vs-) No. 91 CR 10926
Anthony Allen,)) Honorable
Petitioner-Appellant.) Thomas Joseph Hennelly,
) Judge Presiding.

PETITION FOR REHEARING

Now comes appellant, Anthony Allen, pro se, pursuant to this Court's respectfully filing Petition for Rehearing. In support thereof, Appellant states as follows:

1. Appellant filed his Finley Response on May 4, 2022 and this Court affirmed this petition on September 21, 2022.
2. Appellant believes that this Court has overlooked or misapprehended the law or facts of Appellant Finley Response with Smith/Bailey announced the new substantive rules of law.
3. Appellant has established the necessary Cause and Prejudice for Leave to File a Successive Petition under the Act.

Post-conviction petitions under the Act are used to vindicate constitutional rights. 725 ILCS § 5/122-1(a)(1) (petitions can assert defects in criminal convictions amounting to "a substantial denial of [appellant's] rights under the Constitution of the United States or the State of Illinois or both.") A appellant is entitled to file one petition under the Act, but successive petitions require leave of court. 725 ILCS § 5/122-1(f).

Leave to file a successive petition should be granted where the appellant can show two things- cause and prejudice. 725 ILCS § 5/122-1(f) (leave should be granted "if a appellant demonstrates cause for his failure to bring the claim in his initial post-conviction proceedings and prejudice results from the failure"). A appellant shows cause "by identifying an objective factor that impeded his ability to raise a specific claim during his initial post-conviction proceedings." Id. Prejudice is shown "by demonstrating that the claim not raised during his initial post-conviction proceedings so infected the trial that the resulting conviction and sentence violated due process." Id.

The cause-and-prejudice test balances the interest of finality against the need to ensure that constitutional claims can be heard on the merits. See, e.g., People v.



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January 12, 2023

**MICHAEL J. PELLETIER
STATE APPELLATE DEFENDER**

**PATRICIA MYSZA
DEPUTY DEFENDER**

**SHAWN O'TOOLE
ASSISTANT DEPUTY DEFENDER**

**ERIC E. CASTANEDA
ASSISTANT APPELLATE DEFENDER**

Mr. Anthony Allen
Register No. B43715
Hill Correctional Center
P. O. Box 1700
Galesburg, IL 61402

RE: *People v. Anthony Allen*
Cook County No. 91 CR 10926 (02)
Appellate Court No. 1-21-0126

Dear Mr. Allen:

As we discussed over the phone, here is a copy of the appellate court's denial of your PRH.

Sincerely,


ERIC E. CASTANEDA
Assistant Appellate Defender

4 OF 6



CLERK'S OFFICE
APPELLATE COURT FIRST DISTRICT
STATE OF ILLINOIS
160 NORTH LASALLE STREET, RM S1400
CHICAGO, ILLINOIS 60601

November 23, 2022

RE: PEOPLE v. ANTHONY ALLEN
General No.: 1-21-0126
County: Cook County
Trial Court No: 91CR10926

The Court today denied the petition for rehearing filed in the above entitled cause. The mandate of this Court will issue 35 days from today unless a petition for leave to appeal is filed in the Illinois Supreme Court.

If the decision is an opinion, it is hereby released today for publication.

Thomas D. Palella
Clerk of the Appellate Court

c: Office of the State Appellate Defender, First District
State's Attorney Cook County



SUPREME COURT OF ILLINOIS

SUPREME COURT BUILDING

200 East Capitol Avenue

SPRINGFIELD, ILLINOIS 62701-1721

CYNTHIA A. GRANT
Clerk of the Court

(217) 782-2035
TDD: (217) 524-8132

December 27, 2022

FIRST DISTRICT OFFICE
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(312) 793-1332
TDD: (312) 793-6185

Anthony Allen
Reg. No. B43715
Hill Correctional Center
P.O. Box 1700
Galesburg, IL 61402

In re: People v. Allen
129269

Dear Anthony Allen:

This office has timely filed your Petition for Leave to Appeal, styled as set forth above. You are being permitted to proceed as a poor person.

Your petition will be presented to the Court for its consideration, and you will be advised of the Court's action thereon.

Very truly yours,

Cynthia A. Grant

Clerk of the Supreme Court

cc: Attorney General of Illinois - Criminal Division
State's Attorney Cook County

6 OF 6



AFFENDIX "I"

SUPREME COURT OF ILLINOIS

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

Anthony Allen
Reg. No. B43715
Hill Correctional Center
P.O. Box 1700
Galesburg IL 61402

FIRST DISTRICT OFFICE
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TDD: (312) 793-6185

March 29, 2023

In re: People State of Illinois, respondent, v. Anthony Allen, petitioner.
Leave to appeal, Appellate Court, First District.
129269

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 05/03/2023.

Very truly yours,

Cynthia A. Grant

Clerk of the Supreme Court