A-1

1st Deg. Indictment
App. Ct. Ord.
From Ill. S. Ct. PLA

No. 2-20-0293
Summary Order filed May 24, 2022

NOTICE: This order was filed under Supreme Court Rule 23(c)(2) and may not be cited as precedent by any party except in the limited circumstances allowed under Rule 23(e)(1).

IN THE

APPELLATE COURT OF ILLINOIS

SECOND DISTRICT

THE PEOPLE OF THE STATE OF ILLINOIS,	)	Appeal from the Circuit Court of Du Page County.
Plaintiff-Appellee,	)	
v.	)	No. 04-CF-1959
ANSON PAAPE,	)	Honorable Jeffrey S. MacKay,
Defendant-Appellant.	)	Judge, Presiding.

JUSTICE HUTCHINSON delivered the judgment of the court.
Justices Zenoff and Schostok concurred in the judgment.

SUMMARY ORDER

¶ 1 Defendant, Anson Paape, appeals from the judgment of the circuit court, which denied him leave to file a second successive petition under the Post-Conviction Hearing Act (the Act) (725 ILCS 5/122-1 *et seq.* (West 2018)). We affirm.

¶ 2 Following a bench trial, defendant was found guilty of the 2004 shooting death of 18-year old Michael Murray. The shooting occurred during a card game with consequences similar to Russian roulette; the only difference was that it was defendant who put the revolver to Murray's head and pulled the trigger himself. After shooting Murray, defendant tried to convince witnesses that it was a hoax and that what appeared to be Murray's blood was just catsup. Defendant lied to

the authorities about where he hid the murder weapon, changed his appearance, hid out for several days, and planned to flee to Canada. Defendant never made it; he was apprehended and eventually convicted.

¶ 3 The trial court sentenced defendant to 75 years' imprisonment for first-degree murder. See 720 ILCS 5/9-1(a)(2) (West 2004); 730 ILCS 5/5-8-1(d)(iii) (West 2004). Concurrent sentences were also imposed for obstruction of justice and violation of his bail bond. We affirmed defendant's convictions and sentence on direct appeal. *People v. Paape*, No. 2-07-0658 (2009) (unpublished order under Supreme Court Rule 23). In 2010, defendant filed a postconviction petition, which was dismissed. We affirmed. *People v. Paape*, 2013 IL App (2d) 120378-U. Then in 2015, defendant sought leave to file a successive postconviction petition. See 725 ILCS 5/122-1(f) (West 2014). The trial court denied leave and we affirmed that decision as well (*People v. Paape*, No. 2-15-0759 (2017) (summary order)), which brings us to the present case.

¶ 4 In April 2018, defendant yet again sought leave to file another successive postconviction petition. As before, defendant contends that he has come across newly discovered evidences of his "actual innocence." We use quotation marks because defendant has, for years, maintained that *any* evidence bearing on his state of mind would show that he was intoxicated and did not know for certain that the gun was loaded, even if he had been the one that loaded it. According to defendant, all of the mental-state evidence necessarily showed that he did not intend to kill Murray and therefore would be "innocent" of Murray's murder even though there has never been any dispute that defendant was the one who pulled the trigger. The problem with all of this is that defendant was convicted and sentenced on *knowing* murder—that is, the trial court found that defendant *knew* his acts created a strong probability of death or great bodily harm (720 ILCS 5/9-1(a)(2) (West 2004)) regardless of whether or not he intended to kill Murray. We have already addressed the

sufficiency of the evidence in defendant's *three* prior appeals, and his contentions are no more availing now than they were then.

¶ 5 In his latest petition for leave, however, defendant adds a new twist: prosecutorial misconduct. According to defendant, through James Pokryfke, a former detective with the Elmhurst police department, the State presented "false and misleading" testimony to the grand jury. Specifically, defendant says, Detective Pokryfke "lied" when he told the grand jury that Murray said he did not want to play the card game. Defendant claims Murray *did* want to play, and that the State "misled" the grand jury by failing to tell them that defendant told the authorities he loaded a spent shell casing and not a live round into the revolver. Defendant also raised a number of instances where he felt Detective Pokryfke's testimony was inconsistent with information contained in police reports, which defendant claims showed that he was guilty of, at most, involuntary manslaughter. Defendant asserts that without this false testimony, the State "knew" it could never indict him.

¶ 6 The trial court entered a seven-page, single-spaced memorandum detailing and rejecting defendant's claims. The court also noted that contrary to defendant's assertion that he had only "newly discovered" Pokryfke's grand jury testimony in 2017, the record showed that the State tendered the grand jury transcript, per Supreme Court Rule 412(a)(iii) (eff. Mar. 1, 2001), on August 11, 2004, in pre-trial discovery. Furthermore, the court found, there was ample evidence for Pokryfke's grand jury testimony and none of defendant's claimed inconsistencies remotely rose to the level of denying him due process or invalidating his indictment. The court determined that defendant had failed to set forth a true claim of actual innocence, and that his claim likewise could not overcome section 122-1(f)'s cause-and-prejudice test.

¶ 7 After denying leave to file, the trial court appointed the Office of the State Appellate Defender to represent defendant. The Appellate Defender sought leave to withdraw, and defendant elected to proceed *pro se*. The State then filed its response brief and the matter is now before us.

¶ 8 We agree with the trial court's assessment of defendant's motion in all respects. We would further add that grand jury proceedings are "not intended to approximate a trial on the merits." *People v. Fassler*, 153 Ill. 2d 49, 59 (1992). "It is axiomatic that the grand jury sits not to determine guilt or innocence, but to assess whether there is adequate basis for bringing a criminal charge." *United States v. Williams*, 504 U.S. 36, 52 (1992). The State's only duty was to present the grand jury with information that tends to establish probable cause (*Fassler*, 153 Ill. 2d at 60); it need not have presented the grand jury with exculpatory evidence or evidence to reduce the degree of the defendant's culpability. *Williams*, 504 U.S. at 52; see also *People v. Beu*, 268 Ill. App. 3d 93, 97 (1994). That is precisely what defendant's *trial* was for, and the trier of fact heard—and rejected—the same assertions regarding the same perceived inconsistencies in the State's evidence. None of defendant's assertions gives us any reason to doubt the wisdom of the trial judge's verdict.

¶ 9 Defendant's evidence is not new and there is no reason he could not have raised this claim in his original postconviction petition. Moreover, the grand jury transcript, even if it were new, would not have voided the indictment or changed the result of defendant's trial. Once again, the trial court properly denied him leave.

¶ 10 Affirmed.

Grand Jury
1st Deg.

SUPREME COURT OF ILLINOIS

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September 28, 2022

In re: People State of Illinois, respondent, v. Anson Paape, petitioner.
Leave to appeal, Appellate Court, Second District.
128766

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 11/02/2022.

Very truly yours,

Cynthia A. Grant

Clerk of the Supreme Court

Appendix - C