Appendix A

Decision of State Court of Appeals (AND) ORDER of Petition for Rehearing.

2022 IL App (1st) 210097-U

FIFTH DIVISION
August 5, 2022

No. 1-21-0097

IN THE

APPELLATE COURT OF ILLINOIS

FIRST DISTRICT

THE PEOPLE OF THE STATE OF ILLINOIS,	)	Appeal from the Circuit Court
	)	of Cook County.
Plaintiff-Appellee,	)	
	)	
v.	)	No. 99 CR 3090
	)	
JAMES SCOTT,	)	Honorable
	)	Alfredo Maldonado,
Defendant-Appellant.	)	Judge, presiding.

PRESIDING JUSTICE DELORT delivered the judgment of the court.
Justices Cunningham and Connors in the judgment.

ORDER

Held: We affirm the circuit court's dismissal of defendant's postconviction petition at the second stage because his petition does not allege sufficient facts to establish prejudice for his ineffective assistance of counsel claim.

¶ 1 Defendant James Scott appeals from the circuit court's dismissal of his *pro se* petition pursuant to the Post-Conviction Hearing Act (Act) (725 ILCS 5/122-1 *et seq.* (West 2006)) at the second stage, arguing that his petition made a substantial showing that his trial counsel was ineffective for withholding recantation evidence from defendant before his guilty plea. We affirm.

¶ 2 Background

¶ 3 The facts underlying defendant's case were relayed in three previous orders of this court, *People v. Scott*, 367 Ill. App. 3d 1094 (2006) (unpublished order under Illinois Supreme Court Rule 23) (*Scott I*); *People v. Scott*, 397 Ill. App. 3d 1108 (2010) (unpublished order under Illinois Supreme Court Rule 23) (*Scott II*); and *People v. Scott*, 2016 IL App (1st) 133101-U (*Scott III*). Accordingly, we include below only those facts necessary for resolving defendant's current claim.

¶ 4 This case arises from defendant's plea agreement in two simultaneously pending first degree murder trials, the first of which, case No. 99 CR 3092, went to trial in January 2004. In case No. 99 CR 3092, defendant was charged with the first degree murder of Chicago police officer John Knight and attempt first degree murder of Chicago police officer James Butler. In defendant's second case, No. 99 CR 3090, the one at issue here, defendant and Laward Cooper were charged with the first degree murder of victim Lorenzo Aldridge. During pretrial proceedings in the Aldridge matter, the circuit court denied defendant's motion to suppress his statement.

¶ 5 On January 27, 2004, the jury in the Knight matter found defendant guilty of first degree murder and attempt first degree murder. The matter moved to the death penalty sentencing phase. The next day, January 28, 2004, the State represented that "defense counsel approached us about a possible resolution to both this matter and the murder of" Aldridge. The parties reached a plea agreement in which defendant would plead guilty in the Aldridge matter in exchange for sentences of natural life in prison in both matters. The agreement contained a provision barring defendant from filing any appeal or postconviction petition in either case.

¶ 6 During the plea hearing, the circuit court advised defendant in relevant part that he waived his appeal rights and the right to file postconviction petitions. Defendant responded that he understood. For the factual basis in the Aldridge matter, the State represented that defendant

confessed to the shooting in a statement, and Terrence Battle and Lila Porter would both testify that they heard defendant admit to the shooting. The State would also introduce evidence that defendant and Cooper used 9-mm firearms, and seven bullets recovered from Aldridge's body were 9-mm caliber. The court sentenced defendant to natural life without parole based on the plea agreement.

¶ 7 On January 29, 2004, the following day, defendant sent a letter to the circuit court judge requesting "help" to "take back" his plea agreement. Subsequently, defendant filed multiple motions to withdraw his guilty plea, initially *pro se*, and later via appointed counsel. Counsel's motion emphasized that defendant's trial attorneys coerced him into accepting the plea agreement.

¶ 8 On May 17, 2004, the circuit court heard argument regarding the motion to withdraw plea. Mary Clements, an employee of Cook County Public Defender's office, testified that she interviewed witnesses in connection with defendant's cases, but could not remember the witness' names. Defendant also testified at the hearing, and did not mention Battle or Porter. The court denied the motion, finding defendant "was not coerced" and instead "acted voluntarily."

¶ 9 Defendant appealed in both matters. In *Scott I*, this court consolidated the appeals, then affirmed the circuit court in both matters after permitting appellate counsel to withdraw pursuant to *Anders v. California*, 386 U.S. 738 (1967). *Scott I*, slip order at 12.

¶ 10 On April 2, 2007, defendant filed a postconviction petition captioned under the Knight matter only. The petition raised claims only relating to the Knight matter, and did not discuss the Aldridge matter. The circuit court summarily dismissed the petition, and defendant appealed.

¶ 11 On December 31, 2007, defendant filed another postconviction petition, this one captioned under both case numbers. In relevant part, defendant pursued claims of actual innocence and ineffective assistance of counsel in the Aldridge matter. He alleged that his counsel withheld

recantation affidavits from Battle and Porter until after defendant entered his plea, and had he known of the affidavits, he would not have pleaded guilty. Defendant further argued that another witness, Ralph Fonville,[1] gave a statement that contradicted defendant's confession, but his trial counsel did not discuss this with him. He wrote to trial counsel to obtain the affidavits, but counsel refused to provide them. Defendant attached a letter dated August 26, 2004, addressed to his trial counsel, containing the request. The petition also raised claims regarding the Knight matter. The circuit court dismissed the second petition, characterizing it as a successive petition and finding that the allegations "failed to pass the cause and prejudice test."

¶ 12 Defendant appealed, and this court consolidated the matter with the appeal of his April 2007 petition. On appeal, defendant argued in relevant part that the second petition was not successive. In *Scott II*, this court remanded for further proceedings on the Aldridge matter only. *Scott II*, slip order at 15. The court did not address whether the December 2007 petition was a successive petition; instead, it remanded because defendant raised an actual innocence claim, for which a defendant need not show cause and prejudice, citing *People v. Ortiz*, 235 Ill. 2d 319, 330-31 (2009). Furthermore, because that claim satisfied the first stage postconviction review requirements, the court remanded all claims from the Aldridge matter for second stage review because partial dismissal at the first stage is improper, citing *People v. Sparks*, 393 Ill. App. 3d 878, 887 (2009). In so finding, the court did not determine whether defendant's ineffective assistance claim in the Aldridge matter survived the cause and prejudice test. In explaining why the actual innocence claim had an arguable legal basis, the court wrote, "Even if the defendant did not succeed in suppressing his confession, without any physical evidence to support it, the

[1] Because Ralph and Rita Fonville, another witness, share a last name, we will refer to them by their first names.

confession may have proved insufficient for the jury to find him guilty." *Scott II*, slip order at 13. The court also ruled that the plea agreement provision under which defendant waived his right to file postconviction petitions would be unenforceable if he proved his ineffective assistance claim, and thus did not bar the petition at this stage.

¶ 13 On remand, at a proceeding on July 20, 2011, defendant's appointed postconviction counsel indicated he was "working with an investigator to locate the individuals whose affidavits in effect were what the [a]ppellate [c]ourt relied on in ordering the remand." At another proceeding on December 13, 2012, defense counsel stated he was "waiting for my investigator to get back to me with some supposed affidavits." On February 21, 2013, counsel relayed that Battle was deceased. The court asked for clarity regarding whether affidavits at one time existed, but were now lost, and the State's attorney responded that there "never were" affidavits, only "a statement from an investigator."

¶ 14 On April 25, 2013, counsel filed a certificate pursuant to Illinois Supreme Court Rule 651(c) (eff. July 1, 2017), without amending defendant's postconviction petition. In a letter dated April 15, 2013, counsel explained this decision to defendant, stating in relevant part, "the affidavits were never located and attempts to locate the affiants have been fruitless." He also noted he did not seek an affidavit from Clements because Porter allegedly recanted her recantation.

¶ 15 On June 20, 2013, the State moved to dismiss the petition. The State attached to the motion Clements' summaries of her interactions with Battle and Porter, Porter's grand jury testimony, and the handwritten summaries of statements both Battle and Porter gave to the police. These materials appear in the record on appeal.

¶ 16 Porter testified before the grand jury, in relevant part, that approximately a week after Aldridge's death, she overheard Battle and defendant discuss the incident. Defendant initially

denied that he shot Aldridge, but later said, "yeah, okay, I shot him, whatever." Before the shooting, Porter heard defendant express a desire to kill Aldridge for taking "clientele" from defendant. She also testified that she aided Battle in stealing a safe from Cooper's home containing two 9-mm firearms. Porter's statement is consistent with her grand jury testimony.[2]

¶ 17 In Clements' summaries, she relayed that she spoke to Battle, who stated that "at no time did [defendant] or Cooper admit killing" Aldridge. At some point after the shooting, Battle, who liked to "irritate" defendant, said to him "You know you did it," to which he replied, "Yeah Right." Battle did not believe defendant was serious. Battle later told the police otherwise because he was scared and "told them whatever they wanted to hear even if it wasn't true so that he could go home." Similarly, Porter stated she never heard defendant admit to Aldridge's murder, and she only told the police she did at Battle's request.

¶ 18 On August 16, 2013, the circuit court clerk marked as "received" defendant's reply, in which in relevant part he requested to proceed *pro se*.

¶ 19 On August 22, 2013, during argument on the State's motion to dismiss, the State argued that the only reason the *Scott II* court remanded the matter was the potential existence of recantation affidavits, but in actuality the affidavits never existed. Instead, there were only Clements' summaries, and she did not sign an affidavit to confirm authenticity. Counsel further argued that Battle and Porter's statements in the summaries did not constitute actual recantations. Defense counsel rested on defendant's petition. The circuit court granted the State's motion,

[2] On the front page of the grand jury transcript, there is a note indicating that Porter read the transcript and it was accurate, purportedly signed by Porter on December 28, 2012. A similar note appears on a copy of Clements' interview with Porter contained in the record, in which she allegedly recants the recantation. We will not consider this evidence because we must not engage in factfinding at the second-stage, and accept as true defendant's allegation that Porter recanted. See *People v. Coleman*, 183 Ill. 2d 366, 390-91 (1998).

finding the summaries did not constitute legitimate recantations, but did not address defendant's request to proceed *pro se*.

¶ 20 Defendant appealed, arguing remand was appropriate because the circuit court did not rule on his request to proceed *pro se*. In *Scott III*, this court remanded for consideration of whether he knowingly and intelligently waived counsel and could thus proceed *pro se*. *Scott III*, 2016 IL App (1st) 133101-U. On remand, the circuit court ultimately granted defendant's request.

¶ 21 On March 7, 2019, the circuit court again granted the State's motion to dismiss, finding in relevant part that "recantations from Battle and Porter would not have offered [defendant] a viable defense." Defendant moved for reconsideration. During proceedings on that motion, the State produced the police retention file, which is included in the record on appeal.

¶ 22 The file contains detailed statements from certain witnesses involved in the Aldridge matter, summarized in detail by officers, though not verbatim. Ralph relayed that Aldridge was in his home for 15 to 20 minutes before the shooting. In a separate summarized account of the incident, Ralph relayed that he was a drug user and had purchased drugs from both defendant and Aldridge before the shooting. He first purchased from defendant, but then began purchasing from Aldridge. On January 4, 1998, Aldridge arrived at Ralph's home in the "early hours," and Ralph heard gunshots moments after Aldridge left. Rita stated that Aldridge arrived around midnight, and she heard noises a "short" time later.

¶ 23 Battle relayed that before the shooting, he heard defendant speculate that Aldridge was cutting into his drug sales. Approximately a week after Aldridge's shooting, in Porter's presence, Battle asked defendant if he was involved. Defendant denied it initially, but then Battle said, "I know you shot [Aldridge]," to which defendant responded "Yeah, I sat in the bushes and waited for him. I waited [until] he came out of the dope house and I shot him in the head." In February

1998, Porter told Battle about a safe in Cooper's home with two firearms in it. Battle stole the safe, which contained two 9-mm firearms.

¶ 24 The retention file also contained a detailed summary of defendant's statement, in which he relayed that he and Cooper were ordered to kill Aldridge by a gang member for whom they sold drugs. At approximately 11:15 pm on January 3, 1998, defendant observed Aldridge's vehicle outside of Ralph's house. He and Cooper walked to defendant's home, changed clothes, then walked back to Ralph's house and waited for Aldridge to leave. Defendant and Cooper both had 9-mm firearms. A "short time" after midnight, Aldridge exited the house, and defendant and Cooper shot him. They placed the firearms in a safe, which Battle later stole.

¶ 25 On January 11, 2021, the circuit court denied defendant's motion to reconsider. This appeal followed.

¶ 26 Analysis

¶ 27 On appeal, defendant claims that the circuit court erred by dismissing his postconviction petition at the second stage because he made a substantial showing that his trial counsel was ineffective for not disclosing recantation evidence before his guilty plea.

¶ 28 Before we substantively address the claim, however, we must determine whether the December 2007 petition was successive. The Act only provides for one petition as of right for a particular conviction, and before a defendant may file any successive petitions raising new constitutional claims, the circuit court must grant the defendant leave to do so in instances when the defendant demonstrates cause as to why he did not raise the claim earlier, and prejudice should he not be permitted to pursue the claim. 725 ILCS 5/122-1(f) (West 2006). Actual innocence claims are an exception to the cause and prejudice rule (*Ortiz*, 235 Ill. 2d at 330-31), but the same is not true of constitutional claims like ineffective assistance of counsel, and the Act requires a

defendant to show cause and prejudice for each individual claim before the claim can be advanced to the first stage. See 725 ILCS 5/122-1(f) (West 2006); *People v. Pitsonbarger*, 205 Ill. 2d 444, 463 (2002).

¶ 29 In *Scott II*, the court did not determine whether or not the December 2007 petition was successive before advancing both the actual innocence and ineffective assistance claims to the second stage. *Scott II*, slip order at 13-14. This was improper, because if the December 2007 petition was a successive petition, defendant would have been required to demonstrate cause and prejudice for why he did not raise the ineffective assistance claim in the April 2007 petition before that claim could be advanced to the second stage along with the actual innocence claim. *Pitsonbarger*, 205 Ill. 2d at 463 ("a petitioner must establish cause and prejudice as to each individual claim in a successive petition").

¶ 30 Under the law of the case doctrine, this court has the authority to abandon *Scott II* if required. See *People v. Sutton*, 375 Ill. App. 3d 889, 894 (2007) (reviewing court may reverse its prior ruling in the same litigation if it is "palpably erroneous"). Based on our review of the record, however, we find that this was not an error that requires correction because it is clear the December 2007 petition was the initial postconviction petition regarding the Aldridge matter, not a successive petition. Defendant captioned the April 2007 petition as pertaining only to the Knight matter, and only raised issues regarding that matter therein. He captioned the December 2007 petition as pertaining to both matters, and raised issues in both matters therein, including the ineffective assistance claim at issue here. Defendant's charges in each case arose from distinct incidents against distinct victims, and he has distinct convictions on both cases. The Act permits him one initial petition on each, and the record is clear the December 2007 petition was the first postconviction petition in which he pursued claims regarding the Aldridge matter. 725 ILCS

5/122-1(f) (West 2006). Thus, the claims regarding the Knight matter in the December 2007 petition were successive, but the claims regarding the Aldridge matter were not, and the *Scott II* finding that the Aldridge claims should be advanced to the second stage because the actual innocence claim survived first stage review was appropriate, even if its rationale was not. *Sparks*, 393 Ill. App. 3d at 887.[3]

¶ 31 With this established, we move to the substance of defendant's claim. Initially, the State argues this claim is barred by the plea agreement provision in which defendant waived his right to file postconviction petitions. We disagree, and concur with the *Scott II* court on this issue. There, the court found, and we agree, that this provision would be unenforceable if defendant can establish it was the ineffective assistance of the trial counsel that caused him to enter the plea. *Scott II*, slip order at 14-15. Accordingly, we will consider the merits of defendant's claim.

¶ 32 The Act provides a mechanism for criminal defendants to challenge a conviction on the basis that it violates their state or federal constitutional rights. *People v. Pendleton*, 223 Ill. 2d 458, 471 (2006). Claims under the Act are reviewed in three stages. *People v. Tate*, 2012 IL 112214, ¶ 9. The circuit court here dismissed defendant's petition at the second stage of review. At the second stage, the circuit court must accept the defendant's well-pleaded allegations as true, and determine whether the petition makes a substantial showing of a constitutional violation. *People v. Domagala*, 2013 IL 113688, ¶ 35. A defendant makes a substantial showing when he demonstrates he will be entitled to relief if he can prove his allegations at the third-stage evidentiary hearing. *Id.* We review the circuit court's dismissal of a postconviction petition at the second stage *de novo*. *Pendleton*, 223 Ill. 2d at 473.

[3] We note that the State did not raise any issue regarding the timeliness of the December 2007 petition during second stage proceedings before the circuit court or on this appeal, and thereby has waived any potential argument on that ground. See *People v. Boclair*, 202 Ill. 2d 89, 101-02 (2002).

¶ 33 Here, defendant's claim is based on ineffective assistance of counsel respecting a guilty plea. "A challenge to a guilty plea alleging ineffective assistance of counsel is subject to the standard set forth in *Strickland v. Washington*, 466 U.S. 668 (1984)." *People v. Hall*, 217 Ill. 2d 324, 335 (2005). Generally, to establish ineffective assistance of counsel, a defendant must demonstrate both that his counsel's conduct was objectively unreasonable, and that this conduct prejudiced the defendant. *Id.* When a defendant's ineffective assistance claim is based on counsel's conduct during a guilty plea, the prejudice analysis requires that a defendant demonstrate not only that he would have pleaded not guilty but for counsel's unreasonable conduct, but also that the defendant "likely would have been successful at trial." *Id.* at 335-36.

¶ 34 To succeed on an ineffective assistance of counsel claim, a defendant must establish both prongs. *People v. Givens*, 237 Ill. 2d 311, 331 (2010). When a defendant cannot establish prejudice, his claim is resolvable on that basis alone, and the reviewing court need not consider whether counsel's conduct was objectively unreasonable. *Id.*

¶ 35 Defendant's allegations center on his trial counsel allegedly withholding Battle and Porter's recantation affidavits from him until after he pleaded guilty in the Aldridge matter, and also not discussing Ralph's statement with him. He argues that had he known of this evidence, he would have pleaded not guilty, and would likely have succeeded at trial based on this evidence. While the record does not demonstrate that the affidavits ever existed, we must at this stage accept that allegation as true. *Domagala*, 2013 IL 113688, ¶ 35. The record does contain summaries from Clements' interviews with individuals purporting to be Battle and Porter, in which each state they did not hear defendant admit to shooting Aldridge. The record also contains the transcript of Porter's grand jury testimony, and detailed summaries of statements by both Battle and Porter, in which they relay that they heard defendant admit he shot Aldridge and also describe the safe theft.

Battle also testified before the grand jury, though this transcript does not appear in the record on appeal. In the factual basis for defendant's guilty plea, the State detailed defendant's statement, which is also summarized in detail in the police retention file. Finally, the police retention file contains summaries of statements from Ralph and Rita, who testified that Aldridge arrived around midnight and stayed for a short time before he left and was shot moments later. Defendant contrasts this with his statement, where he relayed that he saw Aldridge's vehicle outside of Ralph's home at 11:15 p.m.

¶ 36 On this record, we find defendant has not made a substantial showing of ineffective assistance because his petition does not allege sufficient facts to establish prejudice. The evidence against defendant would not have been significantly affected even if Battle and Porter actually testified at trial and recanted, and Ralph testified as to the time disparity. Defendant's confession is not vague and general; it recounts the events of the evening in great detail. The circuit court denied the motion to suppress, and though he could have challenged the statement's validity at trial, its admissibility is not at issue. Moreover, Porter never recanted that she overheard defendant previously threaten to kill Aldridge for infringing on his drug sales, and neither Battle nor Porter recanted their statements regarding the safe theft.

¶ 37 Additionally, and perhaps most importantly here, should Battle and Porter both have recanted on the stand, the State had strong impeachment material—their statements, and in Porter's case given the record here, her grand jury testimony. Given this impeachment material, the relevance and impact of their recantations likely would have been minimized to become almost negligible. Thus, even assuming all of defendant's allegations regarding the recantation affidavits are true, and Battle and Porter would have testified to that affect at trial, defendant still cannot demonstrate he likely would have succeeded at trial. *Hall*, 217 Ill. 2d at 335-36.

¶ 38 Defendant argues the recantations would be enough to sway a jury by emphasizing the *Scott II* court's language that, "Even if the defendant did not succeed in suppressing his confession, without any physical evidence to support it, the confession may have proved insufficient for the jury to find him guilty." *Scott II*, slip order at 13. This analysis by the court, however, is not binding or conclusive on whether defendant could make a substantial showing of prejudice at the second stage. In *Scott II*, the court conducted a first-stage analysis of an actual innocence claim, and did not analyze the full scope of the record, most notably that Battle and Porter would be subject to impeachment. Additionally, the court in *Scott II* did not consider that the recantation evidence did not address the safe theft testimony that connected defendant with the type of firearm used in Aldridge's shooting, or the comments defendant made about Aldridge before the shooting occurred.

¶ 39 Defendant also argues that his prejudice showing is buoyed by the time discrepancy between his and Ralph's accounts of the incident, but this evidence is inconsequential. This is not a difference of days or even hours. At most, there is a 45 minute discrepancy, which does not counter the core details defendant admitted in his statement—he was outside of Ralph's home shortly after midnight, saw Aldridge exit, and then he and Cooper shot Aldridge with 9-mm firearms.

¶ 40 Having found that defendant's petition did not make a substantial showing of prejudice, we need not consider whether counsel's alleged conduct was objectively unreasonable. *Givens*, 237 Ill. 2d at 331.[4]

[4] We note that the State discussed the impact of the pending death penalty hearing in the Knight matter on defendant's decision to accept the plea agreement. Because we find that defendant cannot show prejudice for any alleged ineffective assistance of counsel based on the Aldridge record alone, we do not make any statement as to whether it would be appropriate for this court to consider the potential death

¶ 41 Conclusion

¶ 42 Defendant's petition did not make a substantial showing of prejudice for his ineffective assistance claim, and accordingly the circuit court did not err by granting the State's motion to dismiss his postconviction petition at the second stage.

¶ 43 Affirmed.

penalty exposure in the Knight matter in evaluating defendant's trial counsel's conduct respecting the guilty plea in the Aldridge matter.

No. 1-21-0097

IN THE
APPELLATE COURT OF ILLINOIS
FIRST JUDICIAL DISTRICT

THE PEOPLE OF THE STATE OF ILLINOIS,	)	Appeal from the
	)	Circuit Court of
Plaintiff-Appellee,	)	Cook County.
	)	
v.	)	No. 99 CR 3090
	)	
JAMES SCOTT,	)	Honorable
	)	Alfredo Maldonado,
Defendant-Appellant.	)	Judge, presiding.

ORDER

This cause coming to be heard on the Petition for Rehearing of the Defendant-Appellant, and the court being fully advised in the premises;

IT IS HEREBY ORDERED that,

1. The Petition for Rehearing is DENIED.

DATED: _____

Mathias W. Delort
JUSTICE

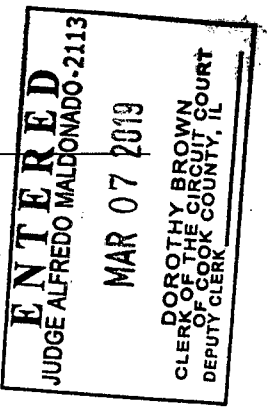
ORDER ENTERED
SEP 26 2022
APPELLATE COURT FIRST DISTRICT

JUSTICE

Karen E. Conners
JUSTICE

Appendix B
Decision of State Trial Court

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



PEOPLE OF THE STATE OF ILLINOIS,	)	
	)	99 CR 03090-01
Plaintiff-Respondent,	)	
	)	
v.	)	Postconviction
	)	
JAMES SCOTT,	)	
	)	Hon. Alfredo Maldonado
Defendant-Petitioner.	)	Judge Presiding

Order Dismissing Petition for Postconviction Relief

This matter concerns a postconviction petition originally filed in 2007. The circuit court dismissed the petition on the State's motion. The appellate court remanded the case with instructions for the circuit court to, first, conduct a hearing to determine whether Scott knowingly and intelligently waived his right to postconviction counsel, and, if so, hold a new hearing on the State's motion to dismiss where Scott may represent himself. *People v. Scott*, 2016 IL App (1st) 133101, ¶ 36 (unpublished). In the initial hearing on remand, this Court found that Scott knowingly and intelligently waived his right to postconviction counsel. Accordingly, the Court allowed Scott to proceed on his *pro se* supplemental petition and to reply to the State's motion to dismiss. On October 10, 2018, the Court presided over a hearing on the State's motion to dismiss. This order follows.

Background

In a capital case, a jury found James Scott guilty of the first-degree murder of Chicago Police Officer John Knight and attempted first-degree murder of his partner Officer James Butler stemming from a shoot-out in January 1999. (Cook County Case - 99 CR 03092). The jury returned its verdict on January 27, 2004. At the time, Scott had another case pending in which he was indicted along with Laward Cooper for the unrelated first-degree murder of Lorenzo Aldridge, which occurred in January 1998, a year before the Officer Knight murder. (Cook County Case - 99 CR 03090). The State sought the death penalty for the Officer Knight murder. See 720 ILCS 5/9-1(b)(1) (the murder of a police officer is an aggravating factor for death eligibility). Scott was alternately eligible for the death penalty if also found guilty of the Aldridge murder. See 720 ILCS 5/9-1(b)(3) (multiple murder is an aggravating factor). The Cook County Public Defender's office represented Scott in both matters.

The day after the Knight verdict, January 28, 2004, Scott entered a negotiated guilty plea to the Aldridge murder. Under the terms of the plea, Scott would avoid the death penalty and receive life imprisonment without parole for both the Officer Knight murder and the Aldridge murder. In addition, as part of the plea, Scott waived his rights to appeal and to seek collateral relief in both cases. Because of the plea, the case involving Officer Knight's murder did not proceed to the penalty phase.

The factual basis for the guilty plea to the Aldridge murder included Scott's court reported statement to an Assistant State's Attorney confessing in detail to the planning and shooting of Aldridge. The State also offered the proposed testimony of Terrance

Battle saying that, a week after the shooting, he accused Scott of shooting Aldridge and Scott eventually admitted it. The State also offered the proposed testimony of Lila Porter, Cooper's niece, that she overheard the conversation. Both Battle and Porter signed detailed statements on January 14, 1999 at Area 2 Police Headquarters with a detective and Assistant State's Attorney. They both testified consistent with those statements before a grand jury the next day.

On February 9, 2004, Scott filed a *pro se* motion to withdraw his guilty plea. His principal claim was that his plea was not voluntary because his lawyers pressured him. Judge Clayton Crane appointed new counsel to represent him and conducted a hearing on the motion. Ultimately, Judge Crane denied the motion on May 26, 2004.

Scott appealed. Appointed appellate counsel moved to withdraw and filed an *Anders* brief stating there were no issues of arguable merit. Scott filed a *pro se* brief asserting numerous arguments including ineffective assistance with the plea and that he should be permitted to withdraw the plea and proceed to trial on the Aldridge murder to prove his innocence. Among his contentions, Scott claimed his confession to the Aldridge murder was coerced. The appellate court rejected his claims and affirmed. *People v. Scott*, 367 Ill. App. 3d 1094 (2006) (table) (unpublished) (appeal denied 223 Ill. 2d 673 (2007)) (*cert.* denied 2007 U.S. LEXIS 12116).

In April 2007, Scott filed a *pro se* postconviction petition in the Officer Knight case claiming (1) prosecutorial and police misconduct, (2) the jury was not impartial, and (3) ineffective assistance of appellate counsel. The petition was summarily dismissed. Scott filed a notice of appeal.

In December 2007, Scott filed a *pro se* postconviction petition in both the Officer Knight and Aldridge cases. The petition mostly addressed the Aldridge case. Scott alleged (1) he is actually innocent of the Aldridge murder and (2) his trial lawyers were ineffective with his plea. The asserted basis of these claims was that Battle and Porter signed affidavits recanting their statements and the public defenders withheld them from him. The affidavits were not attached to the petition, but Scott included a copy of a letter to his counsel requesting them. Scott also repeated some allegations regarding the Officer Knight case he had included in his April petition. Judge Crane found the December petition was successive to the April petition and denied leave to file because Scott failed to show required cause and prejudice for it to be considered. He also found the plea agreement's waiver of collateral relief barred the petition. Scott appealed.

The appellate court consolidated the appeals of the orders dismissing the April and December-filed petitions. The court found (1) the cause-and-prejudice test did not apply to Scott's actual innocence claim in the Aldridge case; (2) Scott's claims of actual innocence and ineffective assistance were not barred insofar as they depended on matters outside the record of his direct appeal; (3) Scott stated an arguable actual innocence claim and satisfied the Act's requirement by explaining the absence of supporting affidavits. *People v. Scott*, 1-07-1679 & 1-08-0856 cons. (2010) (unpublished). For those reasons, the court remanded for further proceedings in the Aldridge case only. Because it was reviewing a first-stage dismissal, the court did not address ineffective assistance reasoning that partial disposition was not permitted at that stage. *Id.* at 14. It also found that whether Scott's petition was barred by waiver and his

ineffective assistance claim were interrelated and better resolved at subsequent proceedings. *Id.* at 15. By contrast, Scott did not advance arguments regarding the Officer Knight case, so the court found he waived those issues. *Id.* Ultimately, dismissal of the April 2007 petition in the Officer Knight case was affirmed and dismissal of the December 2007 petition in the Aldridge case was reversed and remanded. *Id.*

On remand, appointed counsel made efforts to locate the Battle and Porter affidavits. But, actual affidavits were never found. Trial counsel's file could not be located. Efforts to locate Battle and Porter were also unsuccessful. An investigator learned Battle was deceased and found a possible address for Porter but was unable to contact her. Ultimately, counsel did not file an amended petition. Instead, counsel filed a Rule 651(c) certificate and attached a summary of the efforts to locate Porter. Counsel also attached a typed summary of a purported interview of Porter written by an investigator from the public defender's office. The investigator stated he met with Porter on December 8, 2000.[1] The summary explains that Porter didn't overhear Scott's admission to Battle, but she gave her January 14, 1999 statement at Battle's direction, so he wouldn't go to jail.

After counsel filed the 651(c) certificate, Scott, *pro se*, filed a supplement to his petition and a reply to the State's motion to dismiss. Judge Crane was not apprised of the *pro se* filings, in which Scott requested to represent himself, but granted the State's motion. As explained at the outset, the appellate court remanded for further

[1] There is also a purported summary of an interview with Battle on December 8, 2000. However, the summary has not been submitted in the record. Nevertheless, the State's brief acknowledges its existence and describes its content.

proceedings to consider Scott's request for self-representation and address the State's motion accordingly. *Scott*, 2016 IL App (1st) 133101 (unpublished).

Legal Standard

The Postconviction Hearing Act (Act) allows an imprisoned person to petition the court to claim there was a substantial denial of his or her constitutional rights in the proceedings that resulted in conviction. 725 ILCS 5/122-1(a)(1), (b). A petitioner is not entitled to a hearing on these claims as a matter of right. *People v. Coleman*, 183 Ill. 2d 366, 381 (1998). Rather, the Act provides a three-stage process to adjudicate claims. *People v. Cotto*, 2017 IL 119006, ¶ 26.

At the second stage, the State must either answer the claims or move to dismiss the petition. 725 ILCS 5/122-5. To withstand a motion to dismiss and advance to a third-stage evidentiary hearing, the petitioner must make a substantial showing of a constitutional deprivation. *People v Dupree*, 2018 IL 122307, ¶ 28. The substantial showing required to warrant a hearing is "a measure of the legal sufficiency of the petition's well-pled allegations of a constitutional violation, which if proven at an evidentiary hearing, would entitle petitioner to relief." *Id.* ¶ 29. The petition's allegations must be supported by affidavits, records, or other evidence. *Id.* ¶ 28; 725 ILCS 5/122-2. "Well-pleaded factual allegations of a petition and its supporting evidence must be taken as true unless they are positively rebutted by the record of the original trial proceedings." *Sanders*, 2016 IL 118123, ¶ 48. But, non-factual or unspecific allegations, which merely amount to conclusions are insufficient. *Coleman*, 183 Ill. 2d at 381. "In considering a petition pursuant to [the Act], the court may examine the court

file of the proceeding in which the petitioner was convicted, any action taken by an appellate court in such proceeding and any transcripts of such proceeding." 725 ILCS 5/122-2.1(c).

Further, a petition for postconviction relief is a collateral proceeding, not an appeal of the underlying judgment. *People v. Blair*, 215 Ill. 2d 427, 447 (2005). So, *res judicata* bars consideration of issues that were previously raised and decided on direct appeal and forfeiture bars issues that could have been raised but were not. *Id.* at 443-44.

Analysis

A. *Actual Innocence*

As to Aldridge's murder, Scott contends that the case against him was weak because of the absence of any eyewitnesses or physical evidence implicating him. While acknowledging he gave a confession, Scott contends it resulted from physical and mental coercion and, even if the confession were admitted at trial, it would not have been sufficient to convict him. Likewise, Scott acknowledges Cooper gave a statement implicating them both in Aldridge's murder, but Scott believes Cooper would testify favorably for the defense. Considering these factors, in Scott's view, the statements from Battle and Porter were "the only evidence that tied [Scott] to the murder." So, if they had recanted, Scott believes he would have been acquitted at trial. With this reasoning, Scott asserts he has made a colorable claim of actual innocence.

Importantly, actual innocence is not concerned with legal innocence, that is, whether evidence is sufficient to prove the defendant's guilt beyond a reasonable doubt. *People v. Barnslater*, 373 Ill. App. 3d 512, 520 (2007). Rather, actual innocence

concerns factual innocence. *Bousley v. United States*, 523 U.S. 614, 623 ("'actual innocence' means factual innocence, not mere legal insufficiency"). The hallmark of actual innocence is total vindication or exoneration. *People v. Evans*, 2017 IL App (1st) 143268, ¶ 30 (citations omitted). Accordingly, this inquiry makes a distinction between being "not guilty" and being "actually innocent." *Barnslater*, 373 Ill. App. 3d at 519. Indeed, even "an acquittal doesn't [necessarily] mean that the defendant did not commit the crime..." *Id.* at 520.

To demonstrate actual innocence, a petitioner must present evidence that is (1) newly discovered, (2) not discoverable earlier through due diligence, (3) material and not merely cumulative, and (4) of such conclusive character that it would probably change the result on retrial. *Sanders*, 2016 IL 118123, ¶ 24. The conclusiveness of the new evidence is the most important element. *Id.* ¶ 47 (citing *People v. Washington*, 171 Ill. 2d 475, 489 (1996)). Conclusive character means the evidence must be so conclusive that, more likely than not, no reasonable juror would convict in light of the new evidence. *Id.* (citing *Edwards*, 2012 IL 111711, ¶ 40). To warrant an evidentiary hearing, the petitioner has the burden to submit enough documentation for the circuit court to determine whether new evidence is of conclusive character. *Edwards*, 2012 IL 111711, ¶ 24. Because such claims concern actual and not legal innocence, this burden is very high. Colorable actual innocence is not merely a pleading standard. *People v. Brown*, 2017 IL App (1st) 150132, ¶ 46 (citations omitted). For comparison, it requires a stronger showing than is necessary to establish prejudice under *Strickland v. Washington*, 466 U.S. 668 (1984) (establishing test for ineffective assistance of counsel). *Id.* ¶ 44. The claim "must be

supported with new reliable evidence—whether it be exculpatory scientific evidence, trustworthy eyewitness accounts, or critical physical evidence." *Id.* ¶ 32 (quoting *Schlup v. Delo*, 513 U.S. 298, 324 (1992)). The requisite showing is even greater when, as here, an actual innocence claim is brought after a finding of guilt based on a plea rather than a jury trial. *People v. Shaw*, 2018 IL App (1st) 152994, ¶ 52. In that case, the petitioner must make a "truly persuasive demonstration of innocence in the form of compelling evidence." *Id.* ¶ 55 (internal quotation marks omitted).

In addition, a claim of actual innocence must be free-standing. A free-standing claim of innocence means that the newly discovered evidence being relied upon "is not being used to supplement an assertion of a constitutional violation with respect to the trial." *People v. Orange*, 195 Ill. 2d 437, 459 (2001). But, when a petitioner relies on the same evidence to supplement constitutional claims with respect to trial, the claim does not constitute a freestanding claim of innocence. *People v. Jackson*, 2018 IL App (1st) 171773, ¶ 70.

Here, Scott's claim relies solely on the purported Battle and Porter affidavits recanting their statements to police about Scott's admission to killing Aldridge. The purported affidavits are also the basis of Scott's ineffectiveness claim with respect to his guilty plea. Accordingly, Scott's claim is not free-standing.

Scott claims that no affidavits from Battle or Porter were ever presented, and the record suggests such affidavits never existed. "In the ordinary case, a trial court ruling upon a motion to dismiss a postconviction petition which is not supported by affidavits or other documents may reasonably presume that postconviction counsel made a

concerted effort to obtain affidavits in support of the postconviction claims but was unable to do so." *People v. Johnson*, 154 Ill. 2d 227, 241 (1993). No such presumption is necessary here. Appointed counsel's 651(c) certificate and attachments affirmatively demonstrated the effort and inability to obtain the affidavits or replacements.

Scott counters that he has not attached affidavits from Battle and Porter because the Public Defender's Office lost them. Scott requested the public defender obtain an affidavit from the investigator to substitute, but counsel did not do so. He believes he is entitled to an evidentiary hearing on his claim because his inability to obtain affidavits was not his fault and, presumably, that there are indications Battle and Porter recanted. The public defender's investigator typed a summary of an interview with Porter (and possibly Battle) and, in a letter, counsel informed Scott that the State provided documents showing Porter "recanted her recantation." In Scott's view, this is affirmative evidence of their recantations.

Whether the affidavits existed or an affidavit from the investigator would suffice as a substitute need not be resolved. Ultimately, recantations from Battle and Porter would not be compelling evidence of Scott's innocence. They are not exculpatory scientific evidence, trustworthy eyewitness accounts, or critical physical evidence. In fact, such recantations would not exonerate Scott at all. The statements both individuals gave police merely reflected Scott's later admission to the crime. Battle and Porter did not witness the Aldridge murder or surrounding events, nor could they offer exculpatory testimony for Scott, such as an alibi. And even if they recanted at trial, their prior inconsistent statements could have been offered for impeachment. *People v. Wilson*,

2012 IL App (1st) 101038, ¶ 38. At most, had Battle and Porter recanted their statements at trial, the recantations would have given Scott only a marginally better chance of acquittal. But, as noted, that is not the proper inquiry. In effect, Scott's claim conflates actual innocence with reasonable doubt.

For these reasons, the Court finds Scott has not made a substantial showing of actual innocence to warrant an evidentiary hearing.

B. *Ineffective Assistance*

Scott also claims that trial counsel withheld the Battle and Porter recantations before he entered his guilty plea in the Aldridge case. He asserts that this rendered his plea unknowing and involuntary.

An allegation of ineffective assistance with a guilty plea is subject to the two-prong *Strickland* test. *People v. Hall*, 217 Ill. 2d 324, 334 (2005) (citing *Strickland v. Washington*, 466 U.S. 668 (1984)). Under *Strickland*, a defendant must establish that (1) counsel's performance fell below an objective standard of reasonableness and (2) the defendant was prejudiced by counsel's substandard performance. *Id.* at 335 (citing *People v. Lawton*, 212 Ill. 2d 285, 302 (2004)). An attorney's performance is deficient if he or she fails to ensure a defendant's guilty plea is voluntary and intelligent. *Id.* (citing *People v. Rissley*, 206 Ill. 2d 403, 457 (2003)). But, "the simple fact that counsel provided erroneous advice is not enough to render a plea involuntary." *People v. Manning*, 371 Ill. App. 3d 457, 459 (2007). Resulting prejudice must be shown. *Id.* For the prejudice prong, "a guilty-plea defendant must show that there is a reasonable probability that, but for counsel's errors, he would not have pleaded guilty and would have insisted on going to

trial." *People v. Brown*, 2017 IL 121681, ¶ 26 (quoting *Hill v. Lockhart*, 474 U.S. 52, 59 (1985)). However, a bare assertion that defendant would have pleaded not guilty and insisted on a trial absent counsel's deficient performance is not enough to establish prejudice. *Hall*, 217 Ill. 2d at 335. When the claim relates to defense strategy or prospects at trial, a petitioner is required to also make a claim of innocence or state a plausible defense that could have been raised at trial. *Brown*, 2017 IL 121681, ¶ 45. When the claim relates to the defendant's understanding of the consequences of pleading guilty, the petitioner must convince the court a decision to reject the plea bargain would have been rational under the circumstances. *Id.* ¶¶ 40, 52.

Scott's case does not neatly fit the framework just outlined. His guilty plea to the Aldridge murder was necessarily and inextricably linked to his predicament in the Officer Knight case. At the time of Scott's plea, his situation was grave. A jury had found him guilty of killing Officer Knight and attempting to kill Officer Butler. If the Officer Knight case had proceeded to the sentencing phase, Scott's prospects of avoiding the death penalty were not promising. The trial evidence was sufficient to prove Scott knew Knight and Butler were police officers acting in the line of duty and the jury would have heard about the Aldridge murder and Scott's prior felonies. Pleading guilty to the Aldridge murder and waiving his appellate and collateral relief rights offered him some chips in a very poor bargaining position. Under the circumstances, Scott's chances for an acquittal in the Aldridge case were of a lesser concern than his capital sentencing prospects. So, for Scott, the question is not only whether there is a reasonable probability that he would have insisted on going to trial in

the Aldridge case, but also that he would have insisted on proceeding to the sentencing phase in the Officer Knight case.

The transcripts of the hearing on the motion to withdraw Scott's guilty plea reveal that the focus and overriding concern of the discussions between Scott and his attorneys was about avoiding the death penalty. So, even if Scott had been told Battle and Porter recanted (and, again, assuming they did so), any increased possibility for an acquittal in the Aldridge case would not likely have led to a decision to go to trial in that case and face a possible death sentence coupled with a possible death sentence in the Officer Knight case. The plea was his only option to avoid the death penalty with certainty.

In addition, Scott's chances of acquittal in the Aldridge case were not good even with recantations from Battle and Porter. As explained in the previous section, recantation testimony would have been subject to impeachment with prior inconsistent statements and, even if accepted, would not have exculpated Scott. The same is true of Cooper's testimony if also recanted as Scott believes he would. Scott's contention that his confession would have been suppressed or discounted if admitted is highly speculative and improbable. Thus, recantations from Battle and Porter would not have offered Scott a viable defense.

This underscores the primacy of understanding that Scott's decision to accept or reject the plea was weighing the risk of two separate chances of the death penalty versus life imprisonment for certain. See *Brown*, 2017 IL 121681, ¶ 41 ("when a defendant does not have a viable defense strategy or chance of acquittal, the decision

whether to plead guilty also involves assessing the respective consequences of a conviction after trial and by plea"). Given the grim circumstances, it would not have been rational to reject the plea. For these reasons, the Court finds Scott has not made a substantial showing of ineffective assistance.

Conclusion

Based on the foregoing, the Court finds the petition fails to make a substantial showing of a constitutional violation. Accordingly, the State's motion is **Granted** and the petition for postconviction relief is hereby **Dismissed**.

Entered:

Judge Alfredo Maldonado
Cook County Circuit Court
Criminal Division

Date: March 7, 2019

Appendix C

Decision of State Supreme Court Denying Review

SUPREME COURT OF ILLINOIS

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

James Scott
Reg. No. R-30284
Menard Correctional Center
P.O. Box 1000
Menard IL 62259

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

January 25, 2023

In re: People State of Illinois, respondent, v. James Scott, petitioner.
Leave to appeal, Appellate Court, First District.
129084

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 03/01/2023.

Cunningham, J., took no part.

Very truly yours,

Cynthia A. Grant

Clerk of the Supreme Court

Appendix D

Decision of State Supreme Court Denying motion for reconsideration of the order denying petition for leave to appeal

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
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April 10, 2023

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James Scott
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Menard Correctional Center
P.O. Box 1000
Menard, IL 62259

In re: People v. Scott
129084

Today the following order was entered in the captioned case:

Motion by Petitioner, *pro se*, for leave to file a motion for reconsideration of the order denying petition for leave to appeal. Denied.

Order entered by the Court.

Cunningham, J., took no part.

Very truly yours,

Cynthia A. Grant

Clerk of the Supreme Court

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