

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.

No. 1-21-1547
Order filed August 21, 2023

First Division

IN THE
APPELLATE COURT OF ILLINOIS
FIRST DISTRICT

THE PEOPLE OF THE STATE OF ILLINOIS,

Plaintiff-Appellee,

v.

JEFFREY BOWERS,

Defendant-Appellant.

) Appeal from the
) Circuit Court of
) Cook County.
)
) No. 01 CR 18019
)
) Honorable
) Thaddeus L. Wilson,
) Judge, presiding.

JUSTICE COGHLAN delivered the judgment of the court.
Justices Pucinski and Hyman concurred in the judgment.

SUMMARY ORDER

¶ 1 Defendant Jeffrey Bowers appeals from the circuit court's order denying him leave to file a successive petition for relief under the Post-Conviction Hearing Act (Act) (725 ILCS 5/122-1 *et seq.* (West 2020)).¹

¶ 2 Following a 2008 jury trial, defendant was found guilty of multiple counts of first degree murder, attempted first degree murder, and aggravated battery with a firearm arising from him and

¹ Defendant's first name is spelled both "Jeffrey" and "Jeffery" in the record. We adopt the spelling from his notice of appeal.

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two accomplices shooting firearms into a crowd, killing two people and seriously injuring two others. Defendant was sentenced to natural life in prison. On direct appeal we affirmed in part with modifications but vacated his sentence and remanded for resentencing. *People v. Bowers*, No. 1-08-1964 (2011) (unpublished order under Illinois Supreme Court Rule 23).

¶ 3 On remand, the circuit court imposed concurrent terms of life imprisonment on two counts of first degree murder, plus 20 years' imprisonment on each count for personally discharging a firearm, and terms of 20 years' imprisonment on two counts of attempted murder, to be served consecutively to the murder counts and to each other. Defendant appealed, and we affirmed, allowing counsel leave to withdraw pursuant to *Anders v. California*, 386 U.S. 738 (1967). *People v. Bowers*, No. 1-12-0494 (2013) (unpublished summary order under Illinois Supreme Court Rule 23(c)).

¶ 4 On March 2, 2012, defendant filed a *pro se* petition for relief under the Act. In the petition and subsequent motions to amend the petition, he raised several issues. Relevant here, defendant argued that a lineup identification of him as one of the shooters took place without his counsel present, and counsel on direct appeal was ineffective for failing to raise that issue. The circuit court dismissed the petition at the second stage. We affirmed on appeal. *People v. Bowers*, 2016 IL App (1st) 141112-U.

¶ 5 On March 3, 2020, defendant filed the motion for leave to file a successive petition, and attached petition, that is the subject of this appeal. He alleged that he was arrested solely based on an investigative alert, which this court found unconstitutional in *People v. Bass*, 2019 IL App (1st) 160640. He asserted that the unconstitutional arrest led to lineup identifications of him as one of the shooters, witness statements implicating him, and the approval of charges against him. He

argued that, if *Bass* had been available, the court would have granted his pretrial motion to quash arrest and suppress evidence, and that the post-arrest evidence substantially influenced the trial court's finding of probable cause and contributed to the jury's verdict. On May 17, 2021, he filed a motion to supplement his petition with newly discovered evidence, namely, two police reports noting that an investigative alert had been issued for him.

¶ 6 Also on May 17, 2021, defendant filed a motion to supplement his petition to argue that his indictment was based on evidence obtained in violation of his constitutional rights. He argued there was an unreasonable 89-hour delay between his arrest and probable cause hearing, during which time the police obtained more evidence against him. Defendant further argued that witnesses' grand jury testimonies were "based on" statements and identifications they made between his arrest and probable cause hearing. He claimed the police put him in a lineup without notifying counsel although some witnesses had already testified before the grand jury and his indictment did not issue until after that lineup.

¶ 7 Defendant alleged he established cause for not raising the unreasonable-delay claim earlier as two people who had recently reentered his life submitted Freedom of Information Act requests and obtained a police report discussing the investigation. He attached the report, which reflects he turned himself in on June 25, 2001, and was processed for a court appearance on June 29, 2001. He claimed that "[e]very link in the prosecutorial chain," including his arrest, probable cause hearing, indictment, and trial, was unconstitutional. The circuit court granted defendant leave to supplement his petition.

¶ 8 On November 5, 2021, the circuit court denied defendant leave to file a successive petition. The court found in a written order that defendant could not establish prejudice regarding his

investigative-alert claim as our supreme court vacated the portion of *Bass* on which defendant relied. See *People v. Bass*, 2012 IL 125434, ¶ 31. Regarding his unreasonable-delay argument, he did not establish cause as he was aware of the facts underlying that claim before filing his initial petition. He did not establish prejudice as Illinois courts had not applied the exclusionary rule to violations of the right to a prompt probable cause hearing.

¶ 9 The Office of the State Appellate Defender, which represents defendant on appeal, has filed a motion for leave to withdraw as appellate counsel, citing *Pennsylvania v. Finley*, 481 U.S. 551 (1987).² Counsel has submitted a memorandum in support of the motion, stating that counsel has reviewed the record and concluded that an appeal would be without arguable merit. Counsel mailed copies of counsel's motion and brief to defendant. This court informed defendant that he may file with this court a written explanation of why he thinks there are meritorious issues in his appeal.

¶ 10 On May 23, 2023, defendant filed a response. He notes that counsel acknowledged that, pursuant to *People v. Smith*, 2022 IL App (1st) 190691, it was arguable that an arrest pursuant to only an investigative alert is unconstitutional, and that counsel does not dispute *Smith* was not available when defendant filed his initial postconviction petition. Defendant takes issue with counsel's conclusion that the officer who arrested him when he turned himself in had personal knowledge of facts establishing probable cause prior to the arrest.

¶ 11 Defendant also disagrees with counsel's conclusion that the evidence against him at trial was overwhelming and excluding the post-arrest lineup identifications by the State's identification

² Before counsel filed the *Finley* motion, defendant filed a motion to remove counsel and proceed *pro se*. We denied that motion and his motions to reconsider.

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witnesses was harmless error under *Smith*. According to defendant, the evidence at trial was weak since no physical evidence tied him to the shooting and witnesses who identified him at trial were impeached.

¶ 12 After carefully reviewing the record, counsel's motion and memorandum, and defendant's response, we agree with counsel's conclusion. Thus, the motion of the Office of the State Appellate Defender for leave to withdraw as counsel is allowed and the judgment of the circuit court is affirmed.

¶ 13 This order is entered in accordance with Supreme Court Rule 23(c)(2), (4), (eff. Feb. 1, 2023).

¶ 14 Affirmed.

No. 1-21-1547.

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. 01 CR 18019
)	
JEFFREY BOWERS,	)	Honorable
	)	Thaddeus L. Wilson,
Defendant-Appellant.	)	Judge Presiding.

ORDER

This cause coming to be heard on defendant-appellant's petition for rehearing, the Court being fully advised in the premises; IT IS HEREBY ORDERED that the petition for rehearing is DENIED.

DATED: _____

/s/ Aurelia Pucinski
JUSTICE

ORDER ENTERED

SEP 28 2023

/s/ Michael B. Hyman
JUSTICE

APPELLATE COURT FIRST DISTRICT

/s/ Mary Ellen Coghlan
JUSTICE



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

September 28, 2023

RE: PEOPLE v. JEFFREY BOWERS
General No.: 1-21-1547
County: Cook County
Trial Court No: 01CR18019

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

APPENDIX B

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

PEOPLE OF THE STATE OF ILLINOIS,)	
	)	01 CR 18019-01
Plaintiff-Respondent,)	
	)	Motion for Leave to File
v.	)	Successive Post-Conviction
	)	Petition
JEFFREY BOWERS,)	
	)	Hon. Thaddeus L. Wilson
Defendant-Petitioner.	)	Judge Presiding

ORDER

On May 9, 2008, following a jury trial, Petitioner, Jeffrey Bowers¹, was convicted of two counts of first-degree murder, among other crimes, and was later sentenced to natural life in prison. Petitioner subsequently filed an initial petition for post-conviction relief, which was dismissed at the conclusion of second-stage proceedings. On March 3, 2020, Petitioner filed the instant motion for leave to file a successive post-conviction petition, and, on March 17, 2020, he supplemented said motion. For the reasons set forth below, Petitioner's motion for leave to file a successive post-conviction petition is DENIED.

FACTUAL BACKGROUND

At approximately 1:00 a.m. on June 23, 2001, Petitioner and two accomplices, Anton Grant and Yob Robinson, dressed in dark clothing and went to a block party on the 7800 block of South Constance Avenue in Chicago. While there, Petitioner and his two accomplices shot into a crowd, fatally wounding Harold Hines and Tredarryl Fort, and seriously injuring Christopher Cork and Steve Lawrence. On July 25, 2001, and in connection with these events, the State charged

¹ Petitioner's first name is alternatively spelled as "Jefferey" in numerous instances throughout the judicial record. For purposes of the present order, this Court adopts the spelling used by Petitioner in his pleadings for the present motion.

Petitioner with twelve counts of first-degree murder, four counts of attempted murder, two counts of aggravated battery with a firearm, and three counts of aggravated discharge of a firearm.

Trial commenced on May 8, 2008, whereat the State introduced the following evidence. Denise Lewis testified that, around the time of the shooting, she was a passenger in a car that was driving eastward on 77th Street, near Constance Street, in Chicago. She saw a group of about five men walking on the sidewalk and thought that she knew them as friends. The driver of the car slowed down and Ms. Lewis called out to the men. At this time, the area was well lit by both street lights and the lights on the houses that the men were passing. Ms. Lewis soon realized that she did not, in fact, know the men.

All of the men were dressed in black. Specifically, Ms. Lewis noticed that one man, whom she identified as Petitioner, was wearing a black, hooded sweatshirt. Petitioner was using both of his hands to hold something underneath his sweatshirt. Ms. Lewis saw the tip and butt of a large gun protruding out of Petitioner's sweatshirt. Ms. Lewis also observed one of the men in the group, whom she later identified to be Mr. Robinson, to have a silver handgun.

At some point, the men turned down Constance Street, after which, Ms. Lewis's car continued onward. A few minutes later, Ms. Lewis heard gunfire that lasted "a long time." The day after the shooting, she went to the police station and identified both Petitioner and Mr. Robinson in a photo array. Two days later, she identified the two in a lineup. On cross-examination, Ms. Lewis admitted that, in her earlier grand jury testimony, she stated that she did not hear gunshots. Ms. Lewis also admitted that, although she also observed Mr. Grant in the group and carrying a gun, she never identified him in a photo array or lineup.

Christopher Cork testified that he was on the porch of a friend who lived on Constance Street when he heard gunshots. He ran into a nearby gangway to escape the gunfire, but he ended

up getting shot in the leg. After he made it into the gangway, he looked out onto Constance Street and saw someone in dark clothing shooting an assault rifle. However, he could not see the face of the shooter. On cross-examination, Mr. Cork testified that there was "a lot" of gunfire, and that it sounded like it was coming from three different kinds of guns.

Tony Wooden testified that, shortly before the shooting, he was walking along Constance Street and away from the block party. Mr. Wooden passed Petitioner, who was walking toward the block party, carrying an AK-47 assault rifle. At that time, Mr. Wooden had known Petitioner for about three years as someone from the neighborhood. As the two passed one another, Mr. Wooden briefly paused, looked at Petitioner, put his head down, and then continued walking. He then turned the corner and ran away. Shortly after, he heard "a lot" of gunfire that sounded like it was coming from three different kinds of guns.

The next day, Mr. Wooden identified Petitioner in a photo array. Two days later, he also identified him in a lineup. Mr. Wooden denied recognizing other shooters. However, during cross-examination, he was impeached with both his initial statement to the police and his grand jury testimony, in which he stated that he saw Mr. Grant at the scene of the shooting.

Derrell Dennis testified that, on the night of the shooting, he was with some friends, including the victims, Mr. Hines and Mr. Fort, outside of his house on Constance Street. Mr. Dennis had just left that group and crossed to the other side of the street when the shooting began. He turned around and saw Petitioner shooting an assault rifle into the crowd of people on the other side of the street. Mr. Dennis had a profile view of Petitioner, who was in the street, standing under a streetlight. Mr. Dennis's view was unobstructed, even though he was hiding behind a bush. Although Mr. Dennis heard gunfire from multiple guns, he did not identify any of the other shooters. As of this time, he had known Petitioner as someone he had seen "around" for the past

four or five years. About three weeks following the shooting, Mr. Dennis identified Petitioner in a lineup as the person firing the assault rifle.

Steve Lawrence testified that, on the night of the shooting, he was with his brother, Michael, and Mr. Fort, in front of his apartment building on Constance Street. Mr. Hines had just walked away from the group, as did Mr. Wooden, who had then begun walking toward 78th Street. Steve saw Petitioner approach from the direction of 78th Street, shooting a "big gun" around two-and-a-half feet long and in his direction. He was shot in the leg and fell down.

Steve remained on the ground and "play[ed] dead" as Petitioner continued walking in his direction. Suddenly, Petitioner's gun jammed. Steve then crawled into the hallway of the apartment building, where his brother helped treat his wound. The area of the shooting was well lit by street lights and Steve had an unobstructed view of Petitioner. The next day, Steve identified Petitioner in a photo array. On cross-examination, Steve testified that he did not know Mr. Grant, and when shown a picture of Mr. Grant by defense counsel, Steve incorrectly identified him as Petitioner.

Michael Lawrence testified that he was with his brother, Steve, and Mr. Fort when he first heard the gunshots. At that time, Michael could see that the gunshots were aimed in his direction. He observed two individuals shooting into the crowd of people on Constance Street. As one of the shooters approached him, coming from the direction of 78th Street, Michael saw that the shooter was Petitioner and that Petitioner was using an assault rifle. Michael then crawled into the hallway of the apartment building and assisted his brother.

When the shooting stopped, Michael found Mr. Fort lying on the ground with a gunshot wound in his back. The next day, Michael identified Petitioner in a photo array, and two days later, he also identified Petitioner in a lineup. Additionally, Michael identified Mr. Grant in a photo array as being the second shooter carrying a gun with a long clip, called a TEC-9.

At trial, the State also presented the testimony of the responding officers and detectives, as well as forensic experts and a medical examiner. As to Petitioner, he then called Detective Scott Rotkovich, one of the investigating officers, to testify in his case-in-chief. Detective Rotkovich testified about which forensic tests he ordered to be performed on the evidence recovered from the crime scene, and about the circumstances surrounding the arrest of Mr. Robinson for a weapons violation. Petitioner also tendered two stipulations for impeachment purposes and which regarded a conflicting statement that Mr. Wooden made to one of the investigating detectives, as well as the content of Ms. Lewis's grand jury testimony. Petitioner neither presented any other evidence nor testified on his own behalf.

Following closing arguments for both parties, Petitioner was found guilty of two counts of first-degree murder; two counts of first-degree murder, during the commission of which, Petitioner personally discharged a firearm; two counts of attempted first-degree murder; and two counts of aggravated battery with a firearm. He was then sentenced to life imprisonment without parole.

Petitioner later appealed his conviction and sentence, which were respectively affirmed and vacated, and the matter remanded for resentencing. On remand, Petitioner was sentenced on each murder count to natural life in prison, plus a consecutive prison term of 20 years for personally discharging a firearm in committing each murder, with the enhanced murder sentences to be served concurrently. Having merged the aggravated battery and aggravated murder convictions, this Court also sentenced Petitioner to 20 years in prison for each of the two attempted murder counts, to be served consecutively to the murder counts and to one another.

On March 2, 2012, Petitioner filed an initial petition for post-conviction relief, which was later dismissed following second-stage proceedings. On March 3, 2020, Petitioner filed the present

motion for leave to file a successive post-conviction petition, which he supplemented on March 17, 2020.

LEGAL STANDARD

The Post-Conviction Hearing Act provides a way by which imprisoned persons in this state can assert that their convictions resulted from a substantial denial of their constitutional rights. See 725 ILCS 5/122-1 (West 2016). “The Act ‘contemplates the filing of only one post-conviction petition.’” *People v. Morales*, 339 Ill. App. 3d 554, 560 (2003) (quoting *People v. Flores*, 153 Ill. 2d 264, 273, 606 N.E.2d 1078, 180 Ill. Dec. 1 (1992)). Consequently, there are immense procedural hurdles to filing a successive post-conviction petition, and these hurdles are lowered only in very limited circumstances. *People v. Davis*, 2014 IL 115595, ¶ 14.

Before filing a successive post-conviction petition, the petitioner must first obtain leave of the circuit court. 725 ILCS 5/122-1(f) (West 2016). The circuit court may grant leave only if the petitioner shows: (1) “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) “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.” *Id.* The petitioner must satisfy both prongs of the cause-and-prejudice test to obtain leave to file the successive post-conviction petition. *People v. Guerrero*, 2012 IL 112020, ¶ 915.

When multiple claims are asserted within a successive post-conviction petition, “[i]t is the [petitioner’s] burden to demonstrate both cause and prejudice for each claim raised. . . .” *People v. McDonald*, 364 Ill. App. 3d 390, 393, 846 N.E.2d 960, 301 Ill. Dec. 357 (2006) (citing *People v. Smith*, 341 Ill. App. 530, 536, 540, 794 N.E.2d 367, 276 Ill. Dec. 472 (2003)). However, during the leave-to-file stage, this burden is low, in that the petitioner need only present a limited amount

of detail. See *People v. Frison*, 365 Ill. App. 3d 932, 933, 851 N.E.2d 890, 303 Ill. Dec. 703 (2006) (explaining that the burden upon the petitioner during the first stage of post-conviction proceedings is so low that he or she need “only present a limited amount of detail”). Additionally, while *pro se* pleadings should be liberally construed by a circuit court, *People v. Smith*, 268 Ill. App. 574, 580, 645 N.E.2d 313, 206, Ill. Dec. 308 (1994), a petitioner must still allege sufficient facts to allow the court to assess whether he or she is entitled to leave to file the successive post-conviction petition. See *People v. Edwards*, 2012 IL App (1st) 091651, ¶ 25 (“The [petitioner] has the burden to plead sufficient facts and submit supporting documentation sufficient to allow the circuit court to make its prejudice determination.”).

ANALYSIS

Petitioner asserts two claims within his motion for leave to file a successive post-conviction petition. Relevant to the first of these claims, Petitioner argues that his June 25, 2001 arrest for the convicted offenses was unconstitutional under the Fourth Amendment to the federal constitution, since the arrest was made absent a warrant and pursuant to an investigative alert. As to Petitioner's second claim, he argues that the State further violated his Fourth Amendment rights by failing to provide him with a prompt probable causing hearing following his warrantless arrest.

Petitioner argues that, in light of the above constitutional violations, all of the evidence that the State acquired following his arrest should have been excluded from being presented at his trial, under the “fruit of the poisonous tree” doctrine. According to Petitioner, this Court should dismiss his charges since, without such evidence, the State would have been unable to convict him at trial. This Court will analyze each of Petitioner's claims in turn.

I. Arrest Pursuant to Investigative Alert

The judicial record reflects that, on June 25, 2001, Petitioner was arrested pursuant only to an investigative alert issued by the Chicago Police Department, and absent an authorizing warrant. Petitioner argues that, in light of the holding in *People v. Bass*, 2019 IL App (1st) 160640, *aff'd in part and vacated in part*, 2021 IL 125434 deeming investigative alerts unconstitutional, the State violated his Fourth Amendment rights by relying on an investigative alert in effectuating his arrest. Petitioner also argues that he has cause for failing to assert this claim in his initial post-conviction petition because the *Bass* decision was issued in 2019, which is subsequent to the time when he filed his initial post-conviction petition in 2012.

Indeed, Petitioner has demonstrated cause for failing to assert the present claim in his initial post-conviction petition. One situation in which reviewing courts have found a petitioner to have cause for failing to raise a claim in his or her initial post-conviction petition is when the legal basis for the claim arises only after the petitioner files the initial post-conviction petition. *See Murray v. Carrier*, 477 U.S. 478, 488, 106 S. Ct. 2639, 91 L. Ed. 2d 397 (1986) (“[W]e note that a showing that the factual or legal basis for a claim was not reasonably available to counsel . . . would constitute cause under [the cause-and-prejudice test].”); *see also, e.g., People v. Davis*, 2014 IL 115595, ¶ 42 (finding that a petitioner had cause for failing to earlier assert a claim where the case giving rise to the claim was not issued until after the petitioner filed his initial post-conviction petition). Since arrests pursuant to investigative alerts remained lawful until the appellate court’s decision in *Bass*, and the decision was not issued until after Petitioner already filed his initial post-conviction petition, he has demonstrated cause for not bringing the operative claim until now.

Despite Petitioner having satisfied the first prong of the cause-and-prejudice test, he has nevertheless failed to satisfy the second prong of the test involving considerations as to prejudice.

This is because Petitioner misapprehends the current state of the law regarding the constitutionality of warrantless arrests made pursuant to investigative alerts. Indeed, and as Petitioner recites, the appellate court in *Bass* held that warrantless arrests are unconstitutional when they are effectuated pursuant to investigative alerts. 2019 IL App (1st) 160640, ¶ 71. However, Petitioner would seem to overlook the fact that the supreme court later vacated this portion of the appellate court's opinion because it found it unnecessary for the appellate court to have decided whether investigate alerts are indeed constitutional. *Id.* ¶¶ 29–31. The supreme court stated the following, in pertinent part:

[T]his court's long-standing rule is that cases should be decided on nonconstitutional grounds whenever possible, reaching constitutional issues only as a last resort. Consequently, courts must avoid reaching constitutional issues unless necessary to decide a case. We do not express an opinion on limited lockstep analysis, its application to warrants or investigatory alerts, or the constitutionality of investigative alerts. Those portions of the appellate opinion dealing with these issues are vacated.

Id. (internal citation omitted).

As a consequence of the supreme court partially vacating the appellate court's decision in *Bass*, there is no remaining case law that renders warrantless arrests pursuant to investigative alerts unconstitutional, provided there is probable cause. *See People v. Braswell*, 2019 IL App (1st) 172810, *leave to appeal denied*, 2020 IL LEXIS 339, 144 N.E.3d 1212, 437 Ill. Dec. 622 (Ill. Mar. 25, 2020); *see also People v. Hyland*, 2012 IL App (1st) 110966.² For this reason, Petitioner's argument that his arrest was unconstitutional on this basis is meritless, and he has failed to show that he is prejudiced by his inability to raise this claim in his initial post-conviction petition.

II. Probable Cause Determination

Petitioner next alleges that, following his warrantless arrest at 7:00 p.m. on June 25, 2001, the State waited 89 hours before initiating a hearing to determine whether there was probable cause

² The record indicates that Petitioner voluntarily went into the police station for questioning and was arrested at the station.

to arrest him. Petitioner argues that this 89-hour lapse in time constitutes an unreasonable delay in obtaining the probable cause determination, and is, thereby, a violation of his Fourth Amendment right to a prompt probable cause determination. Additionally, Petitioner argues ~~that~~ he has cause for failing to assert this claim at any earlier time because, as he alleges, he was unable to procure supporting evidence until immediately prior to filing the present motion.

Relevant to Petitioner's argument that he has demonstrated cause, this Court finds the facts and discussion in *People v. Blalock*, 2020 IL App (1st) 170295 to be illustrative. In *Blalock*, the petitioner sought leave to file a successive post-conviction petition, arguing, in part, that he had cause for failing to raise the claim of a coerced confession in his initial post-conviction petition because the evidence supporting said claim did not exist when he filed the original petition. 2020 IL App (1st) 170295, ¶¶ 24–25. In analyzing whether petitioner demonstrated cause, the court first noted that, regardless of whether the supporting evidence was indeed unavailable when he filed the original petition, the petitioner was nevertheless aware of the facts giving rise to his claim of a coerced confession well before the time of the original filing. *Id.* ¶ 25. The court further noted that, despite the petitioner's awareness of the facts giving rise to his claim, he failed to assert the claim at trial on appeal, and in his previous post-conviction petitions. *Id.* =

The court explained that it was due to petitioner's awareness of the facts giving rise to his claim that his attempt to demonstrate cause had to fail. *Id.* ¶ 26. The court then clarified that, when considering whether a petitioner has cause in the successive post-conviction context, the relevant inquiry is into "[when] the claim itself can be made," and "not when the documentation to support [the] claim becomes available. . . ." *Id.* The court further clarified that "[a] petitioner . . . need [not] be aware of all possible existing evidence that might support a constitutional claim in order to have been obligated to raise the claim in an initial post-conviction petition." *Id.* ¶ 28. The court found

that the earlier lack of supporting evidence did not prevent the petitioner from raising his claim of a coerced confession in his original petition, because he was nevertheless aware of the facts giving rise to the claim. *Id.* ¶¶ 26, 28. With that, the court concluded that the petitioner failed to establish cause for purposes of obtaining leave to file a successive post-conviction petition. ¶ 29.

The circumstances pertaining to cause in this case are analogous to those in *Blalock*. Like the petitioner in *Blalock*, Petitioner here attempts to demonstrate cause for failing to raise his claim of a delayed probable cause determination by arguing that the evidence supporting this claim was unavailable when he filed his initial post-conviction petition. Nevertheless, and as was also so in *Blalock*, Petitioner's allegations in his present motion suggest that he was aware of the facts giving rise to his claim of a delayed probable cause determination, since the time when this very delay occurred. As, in *Blalock*, the petitioner's awareness of the facts giving rise to his claim precluded him from showing cause, regardless of whether his supporting evidence was truly unavailable, this Court also finds that Petitioner has failed to demonstrate cause, regardless of the availability of his own supporting evidence.

Petitioner's inability to demonstrate cause is, alone, sufficient to warrant denial of the present motion. *See People v. Ryburn*, 2019 IL App (4th) 170779, ¶ 19 ("[T]o obtain leave to file a successive [post-conviction] petition, both prongs of the cause-and-prejudice test must be satisfied."). However, and as this Court will continue on in discussing, Petitioner has also failed to demonstrate that he is prejudiced by his inability to raise his present claim at an earlier time.

The Fourth Amendment to the United States Constitution requires that individuals arrested without a warrant be provided a "prompt" probable cause hearing as a prerequisite to an extended restraint on liberty. *People v. Groves*, 294 Ill. App. 3d 570, 577, 691 N.E.2d 86, 229 Ill. Dec. 150 (1998) (citing *People v. Davis*, 85 Ill. 2d 233, 237, 422 N.E.2d 616, 52 Ill. Dec. 614 (1981)). Thus,

"[a]fter a warrantless arrest, the State must provide the [arrestee] with a prompt determination of probable cause by a neutral, detached [judge]." *People v. Sterling*, 357 Ill. App. 3d 235, 248, 828 N.E.2d 1264, 293 Ill. Dec. 766 (2005) (citing *Gernstein v. Pugh*, 420 U.S. 103, 95 S. Ct. 854, 43 L. Ed. 2d 54 (1975)). A judicial determination of probable cause within 48 hours of arrest generally satisfies the strictures of the Fourth Amendment. *County of Riverside v. McLaughlin*, 500 U.S. 44, 56, 111 S. Ct. 1661, 114 L. Ed. 2d 49 (1991).

When a probable cause determination is not made within 48 hours of arrest, the burden is on the State to show the existence of an emergency or some other extraordinary circumstance that suggests that the delay was not unreasonable. *Groves*, 294 Ill. App. 3d at 577, 691 N.E.2d at 92, 229 Ill. Dec. at 156 (citing *McLaughlin*, 500 U.S. at 57, 111 S. Ct. at 1670, 114 L. Ed. 2d at 63). The United States Supreme Court has declined to specify a remedy for the State's unreasonable delay in obtaining a probable cause determination following a warrantless arrest, instead leaving the task to the states. *Sterling*, 357 Ill. App. 3d at 248, 828 N.E.2d at 1276, 293 Ill. Dec. at 778 (citing *Powell v. Nevada*, 511 U.S. 79, 84-85, 114 S. Ct. 1280, 128 L. Ed. 2d 1 (1994)).

"Section 109-1(a) of the Code of Criminal Procedure of 1963 codified [the requirement of a probable cause hearing] and requires that a person arrested with or without a warrant be brought before a judge 'without unnecessary delay.'" *Id.* (quoting 725 ILCS 5/109-1(a) (West 2000)). While there is no separate remedy for the State's failure to obtain a prompt probable cause hearing, the Illinois Supreme Court has provided some guidance on the issue. *See, e.g., People v. House*, 141 Ill. 2d 323, 380, 566 N.E.2d 259, 152 Ill. Dec. 572 (1990) (explaining how the failure to obtain a prompt probable cause hearing affects the validity of a confession obtained during said delay). For example, the supreme court has articulated that "[d]elay alone [is not] . . . considered sufficient cause to penalize the prosecution to the extent of excluding confessions obtained during the period

between arrest and appearance before a judge . . . or to dismiss the case." *Deas*, 85 Ill. 2d at 237, 422 N.E.2d at 618. 52 Ill. Dec. at 616.

Additionally, in *People v. Lucas*, 88 Ill. App. 3d 942, 410 N.E.2d 1040, 43 Ill. Dec. 907 (1980), the appellate court clarified whether the exclusionary rule applies when the State violates an arrestee's right to a prompt probable cause hearing. The defendant in *Lucas* challenged a circuit court's refusal to suppress evidence that derived from the State's unreasonable delay in obtaining a probable cause determination, following his warrantless arrest. 88 Ill. App. 3d at 944, 410 N.E.2d at 1041, 43 Ill. Dec. at 908. The court began addressing the defendant's argument by detailing the remedies that apply in federal cases when the right of the defendant to a speedy determination of probable cause is violated. *Id.* The court explained that "[The United States Supreme Court] has . . . adopted an exclusionary rule applicable in [f]ederal cases which bars the use of evidence derived from an accused when his [f]ederal statutory right to speedy determination of probable cause is violated." *Id.*

However, and in beginning to assess the merits of the defendant's argument, the court noted that the Supreme Court has yet to apply the exclusionary rule where a defendant's right to a prompt probable cause determination arises outside of federal statute. *Id.* The court further noted that nor "has [Illinois] . . . adopted [the exclusionary rule] for application in any [s]tate cases." *Id.* Thus, as the court concluded, "regardless of the merits of the defendant's contention [], . . . [he was] without any basis for relief. . . ." *Id.*

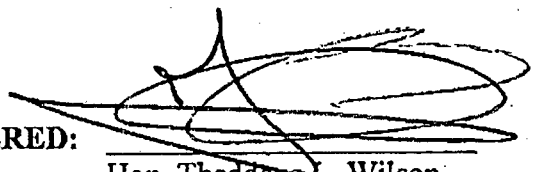
Here, it is irrelevant to the prejudice determination whether 89 hours did truly pass between the time when Petitioner was arrested, absent a warrant, and the time when he was brought before a judge for the probable cause hearing. This is so because said passage of time bears upon whether the delay between his arrest and the probable cause hearing was unreasonable. However, regardless

of whether the delay was unreasonable, and as was also so in Lucas, Petitioner has no basis for the relief that he seeks for the violation of his right to a prompt probable cause hearing. Accordingly, Petitioner cannot be said to have been prejudiced by his failure to raise the present claim in his original petition. His motion for leave to file a successive post-conviction petition must, therefore, be denied.

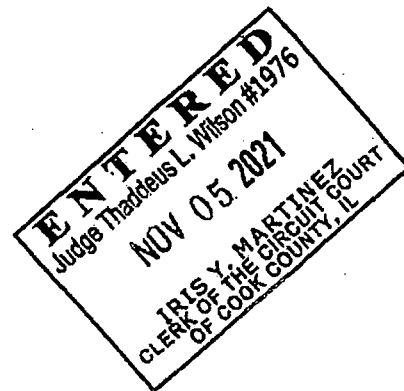
CONCLUSION

Based on the foregoing discussion, Petitioner has failed to satisfy the cause-and-prejudice test requisite to filing a successive post-conviction petition. Therefore, his motion for leave to file a successive post-conviction petition is hereby DENIED.

ENTERED:


Hon. Thaddeus L. Wilson
Circuit Court of Cook County
Criminal Division

1976



APPENDIX C



SUPREME COURT OF ILLINOIS

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January 29, 2025

In re: People State of Illinois, respondent, v. Jeffrey Bowers, petitioner.
Leave to appeal, Appellate Court, First District.
130167

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 03/05/2025.

Very truly yours,

Cynthia A. Grant

Clerk of the Supreme Court