2025 IL App (4th) 240961-U

NO. 4-24-0961

IN THE APPELLATE COURT

OF ILLINOIS

FOURTH DISTRICT

FILED
May 30, 2025
Carla Bender
4th District Appellate
Court, IL

THE PEOPLE OF THE STATE OF ILLINOIS,	)	Appeal from the
Plaintiff-Appellee,	)	Circuit Court of
v.	)	Tazewell County
ERIK M. DAVIDSON,	)	No. 22CF59
Defendant-Appellant.	)	
	)	Honorable
	)	Timothy J. Cusack,
	)	Judge Presiding.

PRESIDING JUSTICE HARRIS delivered the judgment of the court.
Justices Doherty and Cavanagh concurred in the judgment.

ORDER

¶ 1 *Held*: The appellate court reversed and remanded for second-stage postconviction proceedings, finding defendant set forth an arguable claim of actual innocence.

¶ 2 Defendant, Erik M. Davidson, appeals the summary dismissal of his *pro se* postconviction petition at the first stage of postconviction proceedings. Defendant contends he set forth an arguable claim of actual innocence based on the newly discovered affidavits of five individuals who claimed the victim told them that he accidentally shot himself and lied at defendant's trial when he said defendant shot him. We reverse and remand.

¶ 3 I. BACKGROUND

¶ 4 A grand jury charged defendant with aggravated vehicular hijacking (720 ILCS 5/18-4(a)(6) (West 2020)) in that he knowingly took a motor vehicle from the person of Brad Denham by threatening the imminent use of force, and, during the commission of the offense, he

personally discharged a firearm that proximately caused great bodily harm to Denham. Defendant was also charged with unlawful use of a weapon by a felon (*id.* § 24-1.1(a)) in that he knowingly possessed a handgun after being convicted of a felony and aggravated battery (*id.* § 12-3.05(e)(1)) in that, while committing a battery, he knowingly discharged a firearm, thereby causing bodily harm to Denham.

¶ 5 On February 15, 2023, the trial court held a jury trial. Denham testified that he drove Jaymi McGuirk's vehicle to Corey Davis's house on the day of the incident. McGuirk was in the backseat, and Bradley McCree was in the front passenger seat. When they arrived, McGuirk went inside the house, and Denham and McCree stayed in the vehicle. Defendant walked out of the house, approached the vehicle, and placed a bag in the back seat. Defendant then opened the driver's door and told Denham to exit the vehicle. Denham refused, and defendant hit him in the left ear with a hard object. Denham stated it "felt like some type of weapon." He tried to pull defendant into the car so that he could grab the weapon and beat defendant. Defendant backed up, and Denham got out of the car and tried to fight him. Denham "put [his] hands up and went to go after [defendant]." Defendant then shot Denham in his left thigh. Denham got up and tried to "go back after" defendant, but he pointed the gun at Denham and said he would kill him. Denham "took off," and defendant drove away.

¶ 6 Denham testified that he initially did not want to call the police or go to the hospital. He stated he was a felon on parole and he was concerned he would be sent back to prison for being around firearms. He eventually went to the hospital and received treatment for his wound. At the hospital, he told police officers he did not know who shot him because he did not want defendant to get in trouble.

¶ 7 Denham testified that he signed an affidavit at defendant's attorney's office

stating that he was shot by a person he did not know, rather than defendant. Denham stated that this was not true and he signed this affidavit because he did not want defendant to go to prison. Someone had messaged him before he went to the lawyer's office and told him there would be "money waiting there for [him]" after he signed the affidavit, but he did not ultimately get paid. Denham testified that he did not believe he had told anyone that he shot himself, but he did recall telling two people that he was going to say that he shot himself to get defendant out of trouble. Denham stated that he was now telling the truth about the incident because he did not want to get into any more trouble.

¶ 8 McCree testified that, at the time of the incident, he was sitting in the front passenger seat of McGuirk's vehicle and Denham was in the driver's seat. Defendant approached the vehicle and told Denham to get out. Denham refused. Defendant then "pulled the gun" and put it to Denham's head. Denham "kind of smacked the gun away from his head." Denham exited the vehicle and got into a fist fight with defendant. Denham turned around, and "[i]n the position of him turning is when he was shot." McCree stated: "I think he maybe lost his footing a little bit somewhere along the lines and that's when the gun had went off." McCree asserted: "[H]e had went to turn a direction and that's when he had fired the gun and he was shot in the leg and like the gun was so loud that, *** being so close next to it that I don't know." McCree testified that he "maybe blacked out or something" after the gun went off. Defendant told McCree to exit the vehicle, and McCree complied. Defendant drove away in the vehicle.

¶ 9 Davis testified that defendant came over to his house the evening before the incident and stayed there all night. He saw defendant in possession of a gun that had orange "bedazzled jewels" all over it, and he asked defendant to remove the magazine. Davis fell asleep around midnight. When he woke up, defendant was yelling at someone on the phone to hurry and

come pick him up. McGuirk arrived to pick defendant up, and she and defendant started yelling at each other in Davis's living room. Defendant asked McGuirk where the keys to the car were. Defendant then walked out of the house carrying a pistol in one hand and a shotgun in the other. Davis looked out the window and saw defendant pointing a gun at a vehicle parked next to the house. Davis walked to the front door and heard a gunshot. Davis did not witness the shooting, but he was "two seconds behind." He stated, "It was pretty obvious what just happened." He saw defendant holding the gun and pointing it at the vehicle, and Denham was "in the vehicle kind of holding his leg, if you will, kind of scurrying around the vehicle."

¶ 10 Detective Robert Vester testified that he interviewed defendant at the police station in connection with the case. Video clips from the interview were admitted into evidence. In the video, defendant stated that he was trying to leave Davis's house and had received permission from McGuirk to use her vehicle. He asked Denham to get out of McGuirk's vehicle, and Denham started fighting him. As defendant was reaching for the keys to the car, Denham began pulling a gun out of his waistband. Defendant then grabbed the gun, and the two men fought outside of the car. Defendant stated the gun accidentally went off when Denham came at him for a third time. At the time, defendant did not know Denham had been hit. Defendant then drove away in the car.

¶ 11 Later in the interview, defendant stated: "Fine, I had the gun, I shot him. Is that what you want to hear?" Vester replied that he wanted defendant to tell the truth. Defendant said the truth was that he had the gun and shot Denham. Defendant said the "roles [were] reversed" from what he had originally stated, and Denham actually tried to grab the gun from defendant's waistband while they were in the car. They began fighting outside of the car, and the gun accidentally went off when Denham was "coming at him" for a third time.

¶ 12 Christopher Crandell testified as a defense witness concerning statements Denham had made to him. According to Crandell, Denham stated that defendant did not shoot him and he did not know why defendant was arrested. Denham did not tell Crandell who actually shot him.

¶ 13 Defendant testified that he had stayed at Davis's house the night before the incident. The next morning, McGuirk was supposed to pick him up, but she was late. When she arrived, defendant was frustrated it had taken so long. Defendant told McGuirk that he needed to use the vehicle and asked for the keys. He then went out to the vehicle and put his jacket in the back seat. Denham was sitting in the driver's seat, and another individual was sitting in the front passenger seat. Defendant opened the driver's door and told Denham he had permission to use the vehicle. Denham then smacked a beer out of defendant's hand, spilling it on defendant's shirt. Defendant pulled Denham out of the vehicle, and they fought outside the vehicle.

¶ 14 Defendant saw Denham lift his shirt, revealing a black semiautomatic handgun in his waistband. Defendant and Denham both reached for the gun at the same time. Denham's hand was on the gun, and defendant's hand was on Denham's hand. Defendant then heard the gun "go pop." Denham lifted his hands and walked around the back of the car, and defendant had the gun in his hand. Defendant was unsure if he touched the gun before it went off or if he only touched Denham's hand. Defendant drove away in McGuirk's vehicle and later threw the gun in an alleyway. Defendant did not know at that time that Denham had been shot. Defendant acknowledged that he had told detectives during the second part of his interview that he was the one who had a gun, but he said that statement was not true.

¶ 15 The jury found defendant guilty of all three offenses. The trial court imposed consecutive sentences of 31 years' imprisonment for aggravated vehicular hijacking, 7 years'

imprisonment for unlawful use of a weapon by a felon, and 6 years' imprisonment for aggravated battery.

¶ 16 On April 1, 2024, defendant filed a *pro se* postconviction petition, which is the subject of the instant appeal. The petition contained numerous claims, including a claim of actual innocence. The actual-innocence claim was primarily focused on defendant's argument that he did not commit the offense of aggravated vehicular hijacking because he had permission from McGuirk to use the car. As part of the actual innocence claim, defendant also asserted that he had submitted affidavits from five individuals who were Denham's friends and had spoken to Denham about the incident shortly after it occurred. Defendant alleged that these individuals were "willing to testify how [Denham] told a different story even yet." Defendant noted that Denham initially stated that he was shot by someone he did not know and told several different stories concerning the incident. Defendant also stated: "Now Mr. Denham [admitted] on the stand he lied to police and lied on an affidavit. So who's to say he didn't lie on the stand. *** Who's to say he didn't do so to help himself out."

¶ 17 Defendant submitted with his petition the notarized affidavits of Bryce Otten, Terry Biggs, Brent Dusch, Christopher Parr, and Keign Follis, all of which were dated May 4, 2023. Otten averred that, on the day of the incident, Denham told him that he had been in a fight with defendant earlier that day. Denham stated that he tried to pull out a handgun during the fight, and it accidentally went off, "resulting in a gunshot [through] the thigh." Otten stated Denham was "freaking out" because he was on parole and had "told officers numerous lies." According to Otten, Denham "thought [defendant] was going to get in trouble over what he did and said."

¶ 18 In their affidavits, Biggs and Follis stated they heard Denham say on multiple

occasions that he shot himself. Biggs averred that Denham said he was going to blame defendant because he was concerned about getting in trouble for having a gun while on parole. Follis stated that Denham was worried that he would be in trouble for having a gun while on parole and he was also worried that defendant would get in trouble.

¶ 19 Dusch averred that Denham told him he accidentally shot himself "pulling the gun out of his waist trying to get rid of the gun because he got paranoid because he was high and on parole." Denham said he was going to blame defendant so he did not get in trouble with parole.

¶ 20 Parr stated in his affidavit that Denham told him that he shot himself while "trying to pull a gun out." Later, Denham also told Parr that he "lied on the stand to keep him from getting into trouble because he said he didn't want to go back to prison."

¶ 21 The trial court entered an order summarily dismissing defendant's *pro se* petition on the basis that it was frivolous and patently without merit. This appeal followed.

¶ 22 II. ANALYSIS

¶ 23 Defendant argues that the trial court erred by summarily dismissing his postconviction petition as frivolous or patently without merit because it set forth an arguable claim of actual innocence. Specifically, defendant contends that his petition alleged that Denham lied during his testimony to avoid getting in trouble while he was on parole. Defendant contends that the affidavits of Parr, Otten, Biggs, Dusch, and Follis arguably constituted newly discovered evidence that was material, noncumulative, and of such a conclusive character that it could lead to a different result on retrial.

¶ 24 The Post-Conviction Hearing Act (Act) (725 ILCS 5/122-1 *et seq.* (West 2022)) "provides a statutory remedy to criminal defendants who assert claims for substantial violations of their constitutional rights at trial." *People v. Robinson*, 2020 IL 123849, ¶ 42. There are three

stages of review under the Act. *People v. Domagala*, 2013 IL 113688, ¶ 32. At the first stage, the trial court independently reviews the petition and determines whether it is "frivolous or is patently without merit." 725 ILCS 5/122-2.1(a)(2) (West 2022); *People v. Johnson*, 2018 IL 122227, ¶ 14. If the petition is not dismissed at the first stage, the matter advances to the second stage, at which time counsel may be appointed to represent an indigent defendant. *Johnson*, 2018 IL 122227, ¶ 15. At the second stage, the court must determine whether the petition and any accompanying documentation make a substantial showing of a constitutional violation. *Id.* If such a showing is made, the court conducts a third-stage evidentiary hearing. *Id.*

¶ 25 To survive first-stage summary dismissal, "a petition need only present the gist of a constitutional claim." *People v. Gaultney*, 174 Ill. 2d 410, 418 (1996). This is a "low threshold" (*id.*), and a *pro se* petitioner is only required to allege enough facts to "make out a claim that is arguably constitutional." *People v. Thomas*, 2014 IL App (2d) 121001, ¶ 48. A defendant need only present a limited amount of detail and need not make legal arguments or cite legal authority. *Id.* A petition may be dismissed as frivolous or patently without merit at the first stage "only if the petition has no arguable basis either in law or in fact—relying on an indisputably meritless legal theory or a fanciful factual allegation." (Internal quotation marks omitted.) *People v. Allen*, 2015 IL 113135, ¶ 25. In conducting first-stage review, the trial court must take the allegations in the petition as true and construe them liberally. *Id.* We review the summary dismissal of a postconviction petition *de novo*. *Id.* ¶ 19.

¶ 26 "The conviction of an innocent person violates the due process clause of the Illinois Constitution." *People v. Morgan*, 212 Ill. 2d 148, 154 (2004). Accordingly, our supreme court has held that postconviction petitioners may assert claims of actual innocence based on newly discovered evidence. *Id.* "Procedurally, such claims should be resolved as any other

brought under the Act." *People v. Washington*, 171 Ill. 2d 475, 489 (1996). Substantively, relief has been held to require that "the supporting evidence be new, material, noncumulative and, most importantly, of such conclusive character as would probably change the result on retrial." (Internal quotation marks omitted.) *Id.*

¶ 27 Here, we find that the allegations in the *pro se* postconviction petition, taken as true and liberally construed, considered along with the affidavits of Parr, Otten, Biggs, Dusch, and Follis, set forth an arguable claim of actual innocence. See *People v. White*, 2014 IL App (1st) 130007, ¶ 18 ("To survive the first stage of postconviction proceedings, a petition claiming actual innocence based on newly discovered evidence must present evidence that is arguably new, material, noncumulative *** [and] so conclusive it would probably change the result on retrial." (Internal quotation marks omitted.)).

¶ 28 First, we find that it is arguable that the affidavits were newly discovered. In the context of an actual innocence claim, newly discovered evidence is "evidence that was not available at defendant's original trial and that the defendant could not have discovered sooner through diligence." *Morgan*, 212 Ill. 2d at 154. The affidavits in this case reflect that they were signed on May 4, 2023, approximately 11 weeks after the trial. While the petition contains no allegations as to when, specifically, defendant discovered the information in the affidavits, Parr stated in his affidavit that Denham told him he had lied during his trial testimony. Thus, this information was necessarily discovered after the trial.

¶ 29 We next consider whether the proffered affidavits constituted material and noncumulative evidence. "Material means the evidence is relevant and probative of the petitioner's innocence." *People v. Coleman*, 2013 IL 113307, ¶ 96. Evidence is noncumulative if it "adds to what the jury heard." *Id.* In this appeal, the State "does not dispute" that the affidavits

at issue constitute material and noncumulative evidence because, while evidence was presented at the trial that Denham had told people that he was going to say that he shot himself, no evidence was presented that he told people that, *in fact*, he had shot himself. We agree and find that it is arguable that the affidavits constituted material and noncumulative evidence.

¶ 30 Finally, we find the affidavits arguably constitute evidence of "such conclusive character that it would probably change the result on retrial." *Robinson*, 2020 IL 123849, ¶ 47. The conclusive-character element is the most important element of an actual innocence claim, and it "refers to evidence that, when considered along with the trial evidence, would probably lead to a different result." *Id.* ¶ 47. Such evidence "need not be entirely dispositive to be likely to alter the result on retrial." *Id.* ¶ 48. "Ultimately, the question is whether the evidence supporting the postconviction petition places the trial evidence in a different light and undermines the court's confidence in the judgment of guilt." *Id.*

¶ 31 Denham's statements that he accidentally shot himself and that he lied at trial, if believed, would tend to show that defendant did not shoot Denham and cause him bodily harm, which was an element of both the charges of aggravated vehicular hijacking and aggravated battery. Also, Denham's alleged statement that he shot himself while pulling out a gun was arguably consistent with defendant's trial testimony that Denham pulled a gun out of his waistband during the incident and it went off while he and Denham were struggling for control over it. Notably, defendant testified at trial that Denham's hand was on the gun at the time it went off. While Davis and McCree testified at trial they saw defendant with a gun during the incident, Davis testified that he did not see the shooting happen, and McCree's testimony was somewhat unclear as to whether he saw defendant discharge the gun. Thus, we find the affidavits submitted by defendant arguably "place[ ] the trial evidence in a different light and undermine[ ]

the court's confidence in the judgment of guilt." *Id.*

¶ 32 We reject the State's argument that the affidavits were not arguably conclusive in character because Denham's alleged statements that he accidentally shot himself while pulling out a gun were inconsistent with any version of events observed by any of the eyewitnesses and were "contradicted by the testimony of Denham, McCree, Davis, and defendant's various versions of events in the interview." We agree that the affidavits are inconsistent in some ways with the eyewitness accounts of the incident presented at trial. However, at this early stage, "the well-pleaded allegations in the petition and supporting documents will be accepted as true unless it is affirmatively demonstrated by the record that a trier of fact could never accept their veracity." *Id.* ¶ 60; see *People v. Morrow*, 2019 IL App (1st) 161208, ¶ 47. There was no video of the incident or other evidence presented at trial that would affirmatively establish that a trier of fact could never accept the veracity of Denham's statements that he accidentally shot himself. Rather, a trier of fact would have to weigh the credibility of these statements against the testimony of the trial witnesses, and questions of credibility are premature at this early stage. See *Robinson*, 2020 IL 123849, ¶ 61.

¶ 33 We also reject the State's argument that the affidavits, at best, should be viewed as impeachment evidence, which is an insufficient basis for a new trial. The State relies on *People v. Smith*, 177 Ill. 2d 53, 82-83 (1997), in support of its argument. In *Smith*, which involved the denial of a motion for a new trial based on newly discovered evidence, the court stated that the proffered testimony of new witnesses concerned prior out-of-court statements made by a trial witness that were inconsistent with the witness's trial testimony. *Id.* at 83. The *Smith* court noted that such evidence is not admissible substantively, but only for impeachment purposes, and, consequently, was insufficient to warrant a new trial. *Id.*

¶ 34 Unlike *Smith*, the instant case involves the dismissal of a *pro se* postconviction petition at the first stage of postconviction proceedings. Our supreme court stated in *Robinson* that, pursuant to Illinois Rule of Evidence 1101(b)(3) (eff. Sept. 17, 2019), the rules of evidence do not apply to postconviction hearings. *Robinson*, 2020 IL 123849, ¶ 78. Accordingly, the *Robinson* court held that, pursuant to Rule 1101(b)(3), the substance of hearsay evidence in an affidavit must be considered in assessing an actual innocence claim. *Id.* ¶ 80. Pursuant to the foregoing authority, we must consider the substance of Denham's alleged statements in the affidavits in assessing defendant's actual innocence claim.

¶ 35 We also reject the State's argument that Denham's alleged statement that he lied during his trial testimony failed to satisfy the conclusive-character element because it was recantation evidence, which is regarded as inherently unreliable and is not a basis for granting a new trial, except in extraordinary circumstances. See *Morgan*, 212 Ill. 2d at 155. Our supreme court has held that, while recantation testimony is regarded as inherently unreliable, "that determination is not made at the motion to dismiss stage of postconviction proceedings where well-pleaded facts must be taken as true." *People v. Sanders*, 2016 IL 118123, ¶ 33; see *Robinson*, 2020 IL 123849, ¶ 61 ("Credibility findings and determinations as to the reliability of the supporting evidence are to be made only at a third-stage evidentiary hearing.").

¶ 36 Finally, we reject the State's reliance on *People v. Fenton*, 2021 IL App (1st) 171483-U, in support of its argument that the affidavits submitted by defendant were not of such a conclusive character as to probably change the result on retrial. In *Fenton*, the court affirmed the first-stage dismissal of the defendant's *pro se* postconviction petition, finding that it had not "presented a colorable claim of actual innocence." *Id.* ¶ 45. The defendant in *Fenton* based his claim of actual innocence on the affidavit of a trial witness who averred that he lied at trial about

seeing defendant shoot the victim, and he actually saw another individual shoot the victim. *Id.* ¶ 41. The *Fenton* court found this affidavit was not of such conclusive character that it would probably change the result on retrial. *Id.* ¶¶ 44-45. The court noted that the witness's recantation affidavit was "contradicted by his own grand jury and trial testimony" and there were three other eyewitnesses who testified at trial that defendant shot the victim. *Id.* ¶ 44. The *Fenton* court concluded that this evidence "overwhelmingly implicate[d] defendant as the shooter," such that the new affidavit did not undermine its confidence in the trial court's finding of guilt. *Id.* ¶ 45. In so holding, the *Fenton* court cited *Morgan* for the proposition that recantation testimony is inherently unreliable. *Id.* (citing *Morgan*, 212 Ill. 2d at 155).

¶ 37 While *Fenton*, like the instant case, involved the dismissal of a *pro se* postconviction petition at the first stage of initial postconviction proceedings, the court in that case did not appear to apply a first-stage standard when reviewing the actual innocence claim. The court found that the defendant had not presented a "colorable claim of actual innocence." *Id.* However, the "colorable claim" standard is applicable at the leave-to-file stage for a successive postconviction petition. *People v. Morrow*, 2019 IL App (1st) 161208, ¶ 47. At the first stage of initial postconviction proceedings, a defendant need only satisfy the less onerous standard of making a claim that is not frivolous or patently without merit. *Id.* For the reasons previously stated, we find defendant has satisfied this low threshold. Moreover, the *Fenton* court's decision was based, at least in part, on the inherent unreliability of recantation testimony, which is not a proper first-stage consideration. See *Sanders*, 2016 IL 118123, ¶ 33.

¶ 38 Thus, we find that defendant has stated an arguable claim of actual innocence, and, accordingly, we remand the matter for second-stage proceedings as to the entire petition. See *People v. White*, 2014 IL App (1st) 130007, ¶ 33 ("[P]artial summary dismissals are not

permitted during the first stage of a postconviction proceeding.").

¶ 39 III. CONCLUSION

¶ 40 For the reasons stated, we reverse the trial court's judgment and remand the matter for further postconviction proceedings.

¶ 41 Reversed and remanded.