NOTICE
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2026 IL App (5th) 250595-U

NO. 5-25-0595

IN THE

APPELLATE COURT OF ILLINOIS

FIFTH DISTRICT

NOTICE
This order was filed under Supreme Court Rule 23 and is not precedent except in the limited circumstances allowed under Rule 23(e)(1).

THE PEOPLE OF THE STATE OF ILLINOIS,	)	Appeal from the
	)	Circuit Court of
Plaintiff-Appellee,	)	Champaign County.
	)	
v.	)	No. 21-CF-1226
	)	
KEMION D. DORRIS,	)	Honorable
	)	Randall B. Rosenbaum,
Defendant-Appellant.	)	Judge, presiding.

PRESIDING JUSTICE CATES delivered the judgment of the court.
Justices Barberis and Vaughan concurred in the judgment.

ORDER

¶ 1 *Held*: Where the trial court's findings that the defendant's witnesses were not credible were not manifestly erroneous, and where the testimony of the witnesses was not conclusive even if believed, the trial court did not err in denying, following a third-stage evidentiary hearing, the defendant's successive postconviction petition. In addition, the defendant received reasonable assistance of postconviction counsel in this case. Because no arguments to the contrary would have arguable merit, this court grants appellate counsel leave to withdraw, and affirms the judgment of the trial court.

¶ 2 The defendant, Kemion D. Dorris, appeals the judgment of the circuit court of Champaign County that denied, following a third-stage evidentiary hearing, his successive postconviction petition. The defendant's appointed counsel on appeal, the Office of the State Appellate Defender (OSAD), has concluded that this appeal lacks arguable merit, and on that basis, OSAD has filed a motion for leave to withdraw as counsel (see *Pennsylvania v. Finley*, 481 U.S. 551 (1987)), along

with a supporting memorandum of law. OSAD served the defendant with notice. This court provided the defendant the opportunity to file a written response to OSAD's motion. The defendant filed an initial response on February 23, 2026, and a supplemental response on June 9, 2026. This court has examined OSAD's *Finley* motion and memorandum of law, the defendant's two responses, and the record on appeal. This court concludes that OSAD is correct that this appeal lacks arguable merit. Accordingly, we grant OSAD leave to withdraw as counsel, and we affirm the trial court's judgment.

¶ 3 I. BACKGROUND

¶ 4 Many of the facts relevant to the defendant's conviction and sentence are described in this court's disposition of the defendant's direct appeal (*People v. Dorris*, 2024 IL App (5th) 220822-U), and in this court's disposition of the defendant's appeal from the summary dismissal of his initial postconviction petition. *People v. Dorris*, 2024 IL App (5th) 240355-U. Additional relevant facts are taken from the remainder of the record on appeal. On October 12, 2021, the defendant was charged with one count of armed habitual criminal[1] in violation of section 24-1.7(a) of the Criminal Code of 2012 (Code) (720 ILCS 5/24-1.7(a) (West 2020)) and four counts of unlawful possession of a weapon in violation of section 24-1.1(a) of the Code (720 ILCS 5/24-1.1(a) (West 2020)). *Dorris*, 2024 IL App (5th) 220822-U, ¶ 4. The latter four counts ultimately merged, at sentencing, with the offense of armed habitual criminal. *Dorris*, 2024 IL App (5th) 240355-U, ¶ 4. The State's theory of the case was that the defendant possessed a firearm, specifically a 9-millimeter handgun, after having been convicted of burglary and unlawful possession of a weapon by a felon. *Dorris*, 2024 IL App (5th) 240355-U, ¶ 4.

[1]As OSAD correctly notes, the offense of "armed habitual criminal" is now entitled "unlawful possession of a firearm by a repeat felony offender." See 720 ILCS 5/24-1.7(a) (West 2024).

¶ 5 The defendant made a knowing and voluntary waiver of his right to counsel, and thereafter made a knowing and voluntary waiver of his right to a jury trial. *Dorris*, 2024 IL App (5th) 240355-U, ¶ 5. As a result, the defendant represented himself at the bench trial that followed. *Dorris*, 2024 IL App (5th) 240355-U, ¶¶ 5, 8. As part of its case in chief, the State presented, without objection, certified copies of the defendant's convictions for burglary in Champaign County case No. 16-CF-226, and for possession of a weapon by a felon in Champaign County case No. 19-CF-199, which were admitted into evidence. *Dorris*, 2024 IL App (5th) 240355-U, ¶ 8.

¶ 6 The State then presented live testimony and video and audio recordings in support of its case. *Dorris*, 2024 IL App (5th) 240355-U, ¶ 8. The evidence showed that on October 11, 2021, officers from the Champaign Police Department engaged the defendant outside of the defendant's mother's home. *Dorris*, 2024 IL App (5th) 240355-U, ¶ 9. Officers thereafter arrested the defendant in the garage of the home, at which point the defendant asked a woman who was present—who was later identified as Jasmine Epperson—for a kiss. *Dorris*, 2024 IL App (5th) 240355-U, ¶ 9. The defendant leaned toward Epperson and appeared to whisper something to her. *Dorris*, 2024 IL App (5th) 240355-U, ¶ 9. At this time, Epperson was wearing a sweatshirt, while the defendant was wearing a tank top and a pair of jeans or sweatpants. *Dorris*, 2024 IL App (5th) 240355-U, ¶ 9.

¶ 7 Shortly thereafter, while officers were conducting a consensual search of the living room of the home, an officer observed a Nike sweatshirt on a couch and began to move toward it. *Dorris*, 2024 IL App (5th) 240355-U, ¶ 9. As he did so, Epperson, still clad in her own sweatshirt, also moved toward the sweatshirt. *Dorris*, 2024 IL App (5th) 240355-U, ¶ 9. The officer commanded her to stop, but instead she grabbed the sweatshirt. *Dorris*, 2024 IL App (5th) 240355-U, ¶ 9. After a brief struggle, officers took possession of the sweatshirt from Epperson. *Dorris*, 2024 IL App

(5th) 240355-U, ¶ 9. Wrapped in the sweatshirt, officers found a 9-millimeter handgun with a loaded magazine in it. *Dorris*, 2024 IL App (5th) 240355-U, ¶ 9. The defendant was arrested and taken to the county jail. *Dorris*, 2024 IL App (5th) 240355-U, ¶ 9. Officers testified that in a recorded telephone conversation from the jail, the defendant stated that he had been caught with his "pipe," which they testified was slang for a gun. *Dorris*, 2024 IL App (5th) 240355-U, ¶ 9. A single latent fingerprint, which matched the defendant, was found on the magazine of the gun, with no fingerprints found on the gun itself. *Dorris*, 2024 IL App (5th) 240355-U, ¶ 10.

¶ 8 In his case in chief, the defendant testified in narrative form that on October 11, 2021, he and Epperson—who were in a relationship—argued in the garage after the defendant stated that he wanted to break up with Epperson and move away from the area. *Dorris*, 2024 IL App (5th) 240355-U, ¶ 11. The defendant testified that Epperson reached into her backpack, produced a gun the defendant had never seen before, and threatened to shoot the defendant and herself. *Dorris*, 2024 IL App (5th) 240355-U, ¶ 11. The defendant testified that he pleaded with Epperson, and that eventually the magazine fell out of the gun. *Dorris*, 2024 IL App (5th) 240355-U, ¶ 11. He testified that he grabbed the magazine, but that Epperson again threatened to shoot him. *Dorris*, 2024 IL App (5th) 240355-U, ¶ 11. He testified that he did not know if there was a bullet still in the gun, so he tossed the magazine toward Epperson, who picked it up and placed it back in the gun. *Dorris*, 2024 IL App (5th) 240355-U, ¶ 11. He testified that the police eventually arrived and detained him, and that the gun the police found in the garage was not his. *Dorris*, 2024 IL App (5th) 240355-U, ¶ 11.

¶ 9 On cross-examination, the defendant reiterated that he had never seen the gun before. He agreed that he did not tell an investigating detective the things he had just told the court. He denied that he possessed the gun on September 9, 2021, the date of an earlier incident not involving

Epperson. The defendant objected to being asked about the September 9, 2021, incident, which led the trial court to ask the State, "What evidence do you have that on September 9th the defendant possessed the exact same gun?" The State answered, "Shell casings from that shooting were recovered. They were sent to the crime lab, and they were matched to shell casings from [the gun found in the sweatshirt]." The State added that the defendant admitted to a detective that he possessed and fired the gun on September 9, 2021. The defendant contended that although he admitted firing a gun on September 9, 2021, he never told the detective that it was the same gun. He agreed that in his first 15 phone calls from the jail, he never told anyone that Epperson pulled a gun on him.

¶ 10 On redirect examination, the defendant continued to insist that he never possessed the gun that Epperson had on the day the defendant was arrested, that he had never seen that gun before, and that he did not know where Epperson obtained the gun. The trial court rejected—as violating rules against hearsay—attempts by the defendant, prior to and during trial, to introduce an affidavit from Epperson in which she averred the sweatshirt and gun were hers, and a body camera video in which she told a police officer that the sweatshirt was hers. *Dorris*, 2024 IL App (5th) 240355-U, ¶ 13. During the course of the trial, the defendant stated at times that he wished to call Epperson as a witness, but at other times he stated that he would not call her. *Dorris*, 2024 IL App (5th) 240355-U, ¶ 13. Ultimately, the defendant stated that he did not need to have Epperson testify, and he did not attempt to call her as a witness. *Dorris*, 2024 IL App (5th) 240355-U, ¶ 13.

¶ 11 The State contended in its closing argument that the evidence of (1) Epperson's struggle to grab the sweatshirt with the gun in it, (2) the defendant's fingerprint on the magazine of the gun, (3) the defendant's statement in a phone call from the jail that he had been caught with his "pipe"—which was slang for a gun—and (4) the other circumstances surrounding the incident, all proved

that "the defendant was in constructive possession of the firearm." The State argued that the fact that Epperson was already dressed in a sweatshirt, and that the defendant was wearing a tank top, was "consistent with the defendant" owning the sweatshirt in which the gun was found, not with the sweatshirt belonging to Epperson. The State further argued that the defendant did not mention in his first 15 calls from the jail that Epperson pulled a gun on him, and did not tell police that on the day he was arrested. The State contended that although the defendant denied ever seeing the gun before, the State "presented numerous evidence to rebut" the defendant's assertion.

¶ 12 Following closing arguments, the trial court took a brief recess to consider its notes. Thereafter, the trial court found the defendant guilty of all five charges. *Dorris*, 2024 IL App (5th) 220822-U, ¶ 7. The trial court found the State's witnesses and evidence credible, and found the defendant not credible. *Dorris*, 2024 IL App (5th) 240355-U, ¶ 14. Commenting on some of the evidence, the trial court noted that it was only after the defendant appeared to whisper something in Epperson's ear that Epperson went to the couch and tried to grab the sweatshirt before officers could reach it. The court noted that the State could meet its burden of proof that the defendant possessed the gun in this case "by direct or circumstantial evidence," and that it was permissible for inferences to "be drawn from the evidence." The court stated that the evidence in this case supported the inference that the defendant "knows he has a gun, it's in the sweatshirt, in the living room, and he asks [Epperson] to do something with it."

¶ 13 Following a sentencing hearing, the defendant was sentenced to a term of 20 years of imprisonment in the Illinois Department of Corrections. *Dorris*, 2024 IL App (5th) 240355-U, ¶ 15. In his direct appeal, the defendant raised only one issue, arguing that he should have been allowed to withdraw his waiver of a jury trial. *Dorris*, 2024 IL App (5th) 220822-U, ¶ 10. This

court disagreed and affirmed the defendant's conviction and sentence. *Dorris*, 2024 IL App (5th) 220822-U, ¶¶ 11-19.

¶ 14 On December 4, 2023, while the defendant's direct appeal was still pending, the defendant filed a petition pursuant to the Post-Conviction Hearing Act (Act) (725 ILCS 5/122-1 *et seq.* (West 2022)). *Dorris*, 2024 IL App (5th) 240355-U, ¶ 17. In the petition, the defendant claimed that the trial court's denial of two of the defendant's pretrial motions *in limine* deprived the defendant of a fair trial. *Dorris*, 2024 IL App (5th) 240355-U, ¶ 17. The trial court summarily dismissed the defendant's postconviction petition, concluding that the petition did not raise a claim of a constitutional dimension, and that the defendant could have brought his claim in his direct appeal. *Dorris*, 2024 IL App (5th) 240355-U, ¶ 19. OSAD was appointed to represent the defendant on appeal, but moved to withdraw, contending the appeal presented no issues of arguable merit. *Dorris*, 2024 IL App (5th) 240355-U, ¶¶ 2, 23. We agreed, concluding that the defendant's claim could have been raised in his direct appeal, and accordingly was forfeited. *Dorris*, 2024 IL App (5th) 240355-U, ¶ 25. We therefore granted OSAD's motion to withdraw, and affirmed the judgment of the trial court. *Dorris*, 2024 IL App (5th) 240355-U, ¶ 28.

¶ 15 On October 21, 2024, while the defendant's appeal from the summary dismissal of his initial postconviction petition was still pending, the defendant filed what he styled as a petition for relief from judgment. Attached to the pleading were two unsigned affidavits, one purportedly from N.L., and one purportedly from T.L. The affidavits alleged that the defendant was the brother of each affiant, and that each affiant observed a portion of the argument between the defendant and Epperson in the garage, during which the affiants saw Epperson point a gun at the defendant.

¶ 16 On January 10, 2025, the trial court entered an order in which the court characterized the defendant's pleading as a successive postconviction petition and advanced it to the second stage

of proceedings. The trial court appointed the public defender to represent the defendant on his successive postconviction petition, and gave the public defender until March 21, 2025, to file an amended petition and to comply with Illinois Supreme Court Rule 651(c) (eff. July 1, 2017).

¶ 17 On March 21, 2025, the defendant, by counsel, filed the verified amended successive petition for postconviction relief (petition) that is the subject of this appeal. Therein, the defendant sought relief "based on newly discovered evidence and actual innocence." The petition alleged that the newly discovered evidence—which consisted of the statements of N.L. and T.L.—supported the defendant's stand-alone actual innocence claim. The petition stated that counsel, like the defendant, had been unable to obtain signed, notarized affidavits from N.L. and T.L. in support of the claims. The petition was accompanied by exhibits, as well as by counsel's certificate of compliance with Rule 651(c).

¶ 18 On April 17, 2025, the State filed a motion to dismiss the petition. Therein, the State contended (1) the petition was barred by *res judicata*; (2) the affidavits were not signed, dated, and notarized; (3) no facts were alleged that would meet the standard for newly discovered evidence; and (4) the evidence found in the proposed affidavits was not new, material, noncumulative, or conclusive. On May 2, 2025, the defendant's postconviction counsel filed a response. On May 6, 2025, the trial court entered an order in which it advanced the petition to the third stage of proceedings, an evidentiary hearing.

¶ 19 On June 27, 2025, the evidentiary hearing was held. The defendant's postconviction counsel called N.L. as the defendant's first witness. N.L. testified that she was 16 years old and that the defendant was her brother. She testified that on October 11, 2021—more than three and a half years prior to the hearing—she was in the living room of the house in question, playing a game called Roblox. She testified that she heard a commotion coming from the garage, and told

her mother that she thought the defendant and Epperson were arguing. She testified that she walked from the living room to the garage, where she saw the defendant and Epperson "face-to-face arguing." She testified that she observed Epperson "pull out a gun on" the defendant.

¶ 20 N.L. testified that as Epperson pointed the gun at the defendant's face, the defendant "was trying to tell her to put it down." She testified that she was not there long enough to see if Epperson put the gun down, because she went to tell her mom that Epperson had a gun. She testified that she did not tell the police anything about the incident when they arrived at the house because she was scared. She denied that she had ever talked to anyone about the incident prior to the date of the hearing. She thereafter agreed that she had spoken to defense counsel about the incident prior to the hearing, but continued to deny that she had spoken to anyone else about it.

¶ 21 On cross-examination by the State, N.L. testified that T.L. and two other siblings of N.L.'s were present in the living room when the incident happened. She testified that she heard Epperson accuse the defendant of "cheating," and heard the defendant deny the accusation. She testified that she was not aware of a sweatshirt being found in the house, and that she had never seen Epperson or the defendant with a weapon before.

¶ 22 N.L. testified that she went to the garage by herself, opened the door halfway, and saw the defendant with his back completely toward her, and Epperson facing her. She testified that Epperson made eye contact with her, which was how N.L. knew that Epperson saw her. She testified that she told her mom that Epperson and the defendant were fighting, and that she thought her mom should call the police.

¶ 23 N.L. testified that she then returned to the living room, where T.L. and one of her other siblings were still on the couch. She confirmed that she was the only person who got off the couch "and went to check out what was happening" in the garage. She testified that she could not

remember what Epperson was wearing that day, and had never seen Epperson wearing more than one sweatshirt at a time. N.L. testified that she had spoken with the defendant on the phone about the case, and about testifying at his trial. She agreed that she knew the defendant had stated that he planned to call her as a witness at his trial. She agreed that she did not appear at the trial, but stated that she did not remember why. She testified that she did not know if the defendant had a Nike sweatshirt on the day of the incident.

¶ 24 Following N.L.'s testimony, the defense was informed that it could call its next witness. Defense counsel responded, "Your Honor, after conferring with my client, we have no other witnesses." Thereafter, the State called T.L. as a witness.

¶ 25 T.L. testified that while the defendant, who was T.L.'s brother, and Epperson were arguing, T.L. went into the garage and saw Epperson "pointing a gun at" the defendant. He testified that after seeing this, he returned to the living room. T.L. testified that he did not tell anyone else what he saw, and that he did not see anyone else in the garage. He then testified that his sister, N.L., was with him when he looked through a screen door into the garage. T.L. testified that N.L. "was right next to" him the entire time.

¶ 26 T.L. next testified that the defendant and Epperson were arguing, but that he could not remember what they were saying, because the incident happened "years ago." He testified that the defendant and Epperson were facing each other, but that neither of them was facing the doorway where he and N.L. were standing. He added, "I could see them, but they couldn't see me." Moments later, T.L. testified that he did not "know if they could see me." He testified that he could see the defendant's eyes "[a] little bit."

¶ 27 T.L. testified that after he returned to the living room, he did not know where N.L. went. He testified that nobody else was in the living room. He testified that prior to the incident, he and

N.L. were watching television, and that no one else was with them in the living room at that time either. He did not recall anything involving a sweatshirt that day. T.L. testified that he did not talk to anyone about what he saw, and did not know if he ever talked to anyone about giving a statement in the case.

¶ 28 When questioned by the court, T.L. testified that he was presently 14 years old. On cross-examination by defense counsel, T.L. testified that he did not know if he had ever met with defense counsel about the case. He testified that he did not tell the police that he saw Epperson point a gun at the defendant because he was scared. Following T.L.'s testimony, and arguments presented by the parties, the trial court took the matter under advisement.

¶ 29 On June 30, 2025, the trial court entered its written order. Therein, the trial court recounted the testimony given at the evidentiary hearing by N.L. and T.L., and found that both witnesses were "less than credible," because they (1) contradicted each other's testimony in various ways, (2) had an interest in the outcome of their older brother's case, (3) were very young at the time of the incident in the garage, (4) had limited memories of the incident—often testifying "they 'did not know,' "—and (5) testified with demeanors that appeared to the trial court to be "contrived." With regard to the final point, the trial court added that their demeanors appeared to be contrived because "they knew the specifics of what they were to say, but did not have strong or complete answers on anything other than the main issue of seeing [Epperson] with the gun."

¶ 30 The trial court stated that even if the witnesses were credible, their testimony "only minimally corroborated" the defendant's version of what happened in the garage. The trial court stated that the most that their testimony provided, "if believed, was that they saw [Epperson] point a gun at" the defendant. The trial court pointed out that their testimony did not address any of the other evidence that supported the defendant's guilt. The court further pointed out that neither N.L.

nor T.L. testified that they saw the magazine fall out of the gun, or that they saw the defendant pick it up. They also did not testify that they saw the struggle between Epperson and a police officer over the sweatshirt in which the gun was wrapped.

¶ 31 The trial court concluded that it was "possible, but not likely," that N.L.'s and T.L.'s statements were newly discovered. The court reiterated that both witnesses were not credible, but that even if they were, and even if their evidence was newly discovered, it did "not address the most material issues in the case" with regard to the defendant's possession of "a gun on the day in question." The trial court noted that the most important questions for the court were whether the statements of N.L. and T.L. clearly and convincingly demonstrated that a new trial would probably result in an acquittal, and whether the statements were so conclusive that it was more likely than not that no trier of fact would find the defendant guilty beyond a reasonable doubt of possessing the gun. The trial court stated, "The answer to these questions is a resounding 'no.' "

¶ 32 The trial court stated that after considering the credibility of N.L. and T.L., and weighing the evidence presented at the defendant's trial, the court concluded that the defendant had failed to prove, by a preponderance of the evidence, that he was actually innocent. The court stated that therefore the defendant had failed to prove, by a preponderance of the evidence, that his constitutional rights were violated. Accordingly, the court denied the petition. This timely appeal followed.

¶ 33 II. ANALYSIS

¶ 34 In the legal memorandum that accompanies its *Finley* motion to withdraw, OSAD states that it considered raising the following two issues: (1) whether the trial court "committed manifest error" when it found that the defendant "did not present a claim of actual innocence based on newly discovered evidence, and (2) [w]hether postconviction counsel provided unreasonable assistance"

when presenting the defendant's claim. However, OSAD concludes that neither possible issue is of arguable merit. For the following reasons, we agree.

¶ 35 The Act provides a means by which a criminal defendant may assert that, in the proceedings that resulted in the defendant's conviction, there occurred a substantial denial of the defendant's rights under the United States Constitution, the Illinois Constitution, or both. *People v. Evans*, 2013 IL 113471, ¶ 10 (citing 725 ILCS 5/122-1(a)(1) (West 2022)). "A postconviction proceeding is a collateral proceeding, rather than an appeal of the underlying judgment, and therefore it allows inquiry only into constitutional issues that were not, and could not have been, adjudicated on direct appeal." *People v. Terry*, 2016 IL App (1st) 140555, ¶ 32. Moreover, "any claim not presented in an initial postconviction petition or amended petition is waived." *Terry*, 2016 IL App (1st) 140555, ¶ 32. Broad, conclusory allegations are not permissible under the Act. *People v. Delton*, 227 Ill. 2d 247, 258 (2008). In addition, a petition filed under the Act must have attached affidavits, records, or other evidence supporting its allegations, or must state why they are not attached. 725 ILCS 5/122-2 (West 2022). The foregoing notwithstanding, a trial court may grant a defendant leave to file a successive postconviction petition in order to avert a fundamental miscarriage of justice. *People v. Harris*, 2024 IL 129753, ¶ 43. In such circumstances, the defendant must show actual innocence. *Harris*, 2024 IL 129753, ¶ 43.

¶ 36 When a defendant submits evidence in an attempt to demonstrate actual innocence, that "evidence must be new, material, noncumulative, and, most importantly, of such conclusive character as would probably change the verdict on retrial." *Harris*, 2024 IL 129753, ¶ 47. For purposes of an actual-innocence analysis, "conclusive" means the evidence, when considered along with the trial evidence, would probably lead to a different result. *Harris*, 2024 IL 129753, ¶ 65. "The conclusive-character element requires only that the [defendant] present evidence that

places the trial evidence in a different light and undermines the court's confidence in the judgment of guilt," and therefore "[p]robability, not certainty, is the key, as the trial court in effect predicts what another jury would likely do, considering all the evidence, both new and old, together." *Harris*, 2024 IL 129753, ¶ 65.

¶ 37 At a third-stage evidentiary hearing, the trial court serves as the fact finder, and therefore must determine witness credibility, decide the weight to be given to particular testimony and evidence, and resolve any evidentiary conflicts. *People v. Domagala*, 2013 IL 113688, ¶ 34. At the hearing, the defendant bears the burden of showing the denial of the defendant's constitutional rights by a preponderance of the evidence. *People v. Coleman*, 2013 IL 113307, ¶ 92. A trial court's denial of a postconviction petition after a third-stage evidentiary hearing is reviewed for manifest error. *Coleman*, 2013 IL 113307, ¶ 98. Manifest error is error that is clearly evident, plain, and indisputable. *Coleman*, 2013 IL 113307, ¶ 98. "Thus, a decision is manifestly erroneous when the opposite conclusion is clearly evident." *Coleman*, 2013 IL 113307, ¶ 98.

¶ 38 Likewise, "[a] reviewing court will not reverse a trial court's findings regarding credibility determinations or fact finding after a third-stage evidentiary hearing unless the findings are manifestly erroneous." *People v. House*, 2023 IL App (4th) 220891, ¶ 78. The deferential manifest error "standard of review reflects the understanding that the trial court is in the best position to observe and weigh the credibility of the witnesses." *House*, 2023 IL App (4th) 220891, ¶ 78. This court may affirm the trial court on any basis supported by the record because the question before us is the correctness of the result reached by the trial court, not the correctness of the trial court's reasoning in reaching that result. See, *e.g.*, *People v. Johnson*, 208 Ill. 2d 118, 128-29 (2003).

¶ 39 With regard to OSAD's first potential issue in this appeal—whether the trial court "committed manifest error" when it found that the defendant "did not present a claim of actual

innocence based on newly discovered evidence"—we agree with OSAD that the trial court did not err, and that any claim to the contrary would lack arguable merit. First, the trial court, as the finder of fact at the evidentiary hearing, found the testimony of N.L. and T.L. to not be credible. This finding was not manifestly erroneous. As the trial court pointed out, N.L. and T.L. provided inconsistent testimony. For example, N.L. testified that she alone observed the argument in the garage, while T.L. remained on the couch in the living room, whereas T.L. testified that he and N.L. observed the argument together. N.L. testified that prior to the argument she, T.L., and two other siblings were playing a game in the living room, whereas T.L. testified that prior to the argument he and N.L. were watching television, with no one else present. N.L. testified that Epperson and the defendant were facing each other during the argument—with the defendant's back completely to N.L., and with Epperson making eye contact with N.L.—whereas T.L. testified that neither the defendant nor Epperson was facing the doorway where T.L. and N.L. were standing, and that he did not believe either Epperson or the defendant could see him, although he could see the defendant's eyes "[a] little bit."

¶ 40 The trial court listed additional reasons it did not find N.L. and T.L. to be credible, noting its belief that both siblings: (1) had an interest in the outcome of their older brother's case, (2) were very young at the time of the incident in the garage, (3) had limited memories of the incident—often testifying "they 'did not know,' "—and (4) testified with demeanors that appeared to the trial court to be "contrived." With regard to the final point, the trial court added that their demeanors appeared to be contrived because "they knew the specifics of what they were to say, but did not have strong or complete answers on anything other than the main issue of seeing [Epperson] with the gun." Each of these additional reasons is supported by the record as well. We reiterate that our deferential manifest error "standard of review reflects the understanding that the trial court is in

the best position to observe and weigh the credibility of the witnesses." *House*, 2023 IL App (4th) 220891, ¶ 78. For all of these reasons, we conclude that it was not manifestly erroneous for the trial court to find that N.L. and T.L. were not credible witnesses. Accordingly, because their discredited testimony was the only evidence put forward by the defendant in support of his actual innocence claim, the trial court did not err in denying that claim, and the petition.

¶ 41 Second, as the trial court recognized, even if it assumed, *arguendo*, that the testimony of N.L. and T.L. was credible, that testimony was not conclusive. In its written order denying the petition, the trial court stated that the most important questions for the court were whether the statements of N.L. and T.L. clearly and convincingly demonstrated that a new trial would probably result in an acquittal, and whether the statements were so conclusive that it was more likely than not that no trier of fact would find the defendant guilty beyond a reasonable doubt of possessing the gun. The trial court stated, "The answer to these questions is a resounding 'no.' " We agree with the trial court.

¶ 42 As explained above, evidence offered in support of an actual innocence claim "must be new, material, noncumulative, and, most importantly, of such conclusive character as would probably change the verdict on retrial." *Harris*, 2024 IL 129753, ¶ 47. For purposes of an actual-innocence analysis, "conclusive" means the evidence, when considered along with the trial evidence, would probably lead to a different result. *Harris*, 2024 IL 129753, ¶ 65. "The conclusive-character element requires only that the [defendant] present evidence that places the trial evidence in a different light and undermines the court's confidence in the judgment of guilt," and therefore "[p]robability, not certainty, is the key, as the trial court in effect predicts what another jury would likely do, considering all the evidence, both new and old, together." *Harris*, 2024 IL 129753, ¶ 65.

¶ 43 In light of the evidence presented at the defendant's bench trial, described in detail above, it was not manifestly erroneous for the trial court to conclude that the testimony of N.L. and T.L., even if believed, would not probably change the verdict on retrial. The testimony of N.L. and T.L. was only tangentially relevant to the case at all. At most, it supported the proposition that Epperson also possessed the gun on the day in question. It did not in any way challenge the evidence that supported the inference that the defendant possessed the gun that day. For these reasons too, the trial court did not commit manifest error when it denied the petition.

¶ 44 With regard to OSAD's second potential issue in this appeal—whether postconviction counsel provided unreasonable assistance when presenting the defendant's claim—OSAD posits that the only additional thing postconviction counsel potentially could have done to assist the defendant was to amend the petition to include a claim of ineffective assistance of counsel for failure to assert, at trial, a necessity defense. However, as OSAD correctly notes, because the defendant represented himself at trial, the defendant is foreclosed from raising a claim ineffective assistance of trial counsel. See, *e.g.*, *People v. Gibson*, 136 Ill. 2d 362, 382 (1990) (citing U.S. Supreme Court precedent for the proposition that a defendant who chooses to represent himself at trial may not later claim ineffective assistance of trial counsel). Moreover, it is axiomatic that although postconviction counsel must provide reasonable assistance in the presentation of any of the defendant's claims that counsel believes to have merit, counsel has no obligation to add new claims not raised by the defendant. See, *e.g.*, *People v. King*, 2023 IL App (1st) 220916, ¶ 49. Because the defendant could not, and did not, raise a claim of ineffective assistance of trial counsel, no contention that the defendant did not receive the reasonable assistance of postconviction counsel would have arguable merit. Finally, we note that in his two responses to OSAD's motion to withdraw, the defendant does not address OSAD's reasoning at all. Instead, the defendant

attempts to raise new constitutional claims about the statute under which he was convicted, and to assert a new claim of alleged pretrial error. These claims were not raised in the trial court, and are not properly before this court in this appeal.

¶ 45 III. CONCLUSION

¶ 46 For the foregoing reasons, the trial court did not err in denying the petition after the third-stage evidentiary hearing. No argument to the contrary would have arguable merit. Accordingly, we grant OSAD leave to withdraw as counsel, and we affirm the trial court's judgment.

¶ 47 Motion granted; judgment affirmed.