

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).

2026 IL App (4th) 251161-U

NO. 4-25-1161

IN THE APPELLATE COURT

OF ILLINOIS

FOURTH DISTRICT

FILED

September 16, 2026

Carla Bender

4th District Appellate
Court, IL

THE PEOPLE OF THE STATE OF ILLINOIS,	)	Appeal from the
Plaintiff-Appellee,	)	Circuit Court of
v.	)	Boone County
COREY A. LEE,	)	No. 18CF382
Defendant-Appellant.	)	
	)	Honorable
	)	C. Robert Tobin III,
	)	Judge Presiding.

JUSTICE ZENOFF delivered the judgment of the court.
Justices Doherty and Lannerd concurred in the judgment.

ORDER

¶ 1 *Held:* The appellate court affirmed the judgment granting the State’s motion to dismiss defendant’s second amended postconviction petition. Defendant did not allege sufficient facts to support his position that he lacked culpable negligence for filing his initial petition more than two months after the statutory deadline. Defendant also failed to make a substantial showing of actual innocence to justify a third-stage evidentiary hearing on that claim.

¶ 2 After a bench trial with stipulated evidence, the trial court found defendant, Corey A. Lee, guilty of aggravated driving under the influence (DUI) of cannabis, resulting in the deaths of two people (625 ILCS 5/11-501(a)(7), (d)(1)(F) (West 2018)). The court sentenced him to six years in prison. Defendant now appeals an order granting the State’s motion to dismiss his second amended postconviction petition. We affirm.

¶ 3 I. BACKGROUND

¶ 4 A. The Proceedings Resulting in Defendant’s Conviction

¶ 5 Around 6:30 a.m. on March 26, 2018, defendant fell asleep while driving and hit another vehicle, killing the two occupants of that vehicle. Although first responders saw no signs that defendant was impaired, he made a comment at the scene acknowledging he would not pass a drug test. Defendant voluntarily provided blood and urine specimens within two hours of the accident, which the police sent to the University of Illinois Chicago Analytical Forensic Testing Laboratory (UIC lab) for analysis.

¶ 6 On August 22, 2018, Jennifer Bash, a senior analytical forensic toxicology specialist at UIC lab, signed a report summarizing her findings. She determined that defendant's blood contained a delta-9-tetrahydrocannabinol (delta-9-THC) concentration of 6.5 nanograms per milliliter, plus or minus 0.6 nanograms per milliliter, with a 99.7% confidence level. The report did not specify whether defendant's blood also contained delta-8-tetrahydrocannabinol (delta-8-THC), an isomer that was not regulated under Illinois's DUI laws. Bash detected no substances of relevance to this appeal in defendant's urine sample.

¶ 7 Based on the toxicology results showing that defendant had a delta-9-THC concentration exceeding five nanograms per milliliter of whole blood, the State charged him with aggravated DUI, among other offenses. See 625 ILCS 5/11-501(a)(7), (d)(1)(F), 11-501.2(a)(6) (West 2018) (establishing that a person who is involved in a fatal car accident and lacks a valid medical cannabis card commits the offense of aggravated DUI if, within two hours of driving a vehicle, he or she has a delta-9-THC concentration of five nanograms or more per milliliter of whole blood).

¶ 8 In September 2019, the State tendered to the defense a disk that included a 165-page PDF file reflecting UIC lab's testing records of defendant's biological samples. In the proceedings leading to his conviction, defendant did not challenge his toxicology results or argue

that there were any flaws in UIC lab’s methods. Rather, defendant, with the assistance of an expert pharmacologist, challenged the constitutionality of the statutory scheme treating people who lacked valid medical cannabis cards differently from people who possessed such cards for purposes of the five-nanograms-per-milliliter-of-whole-blood DUI rule. As part of the factual basis for that challenge, defendant maintained that because he was a long-term, heavy cannabis smoker, his delta-9-THC concentration exceeded the legal limit even though he was not impaired and had last smoked 27 hours before the accident. The trial court found that the statutory scheme was constitutional, and the matter proceeded to a bench trial with stipulated evidence. Among the stipulations were that Bash was qualified as an expert in the field of forensic toxicology and that she would testify to the findings reflected in her report. The parties further stipulated that “all instruments were working properly and the testing performed is generally accepted in the scientific community.”

¶ 9 The trial court found defendant guilty of aggravated DUI and sentenced him to six years in prison. On appeal, defendant reiterated his constitutional argument and challenged his sentence. We affirmed the court’s judgment. *People v. Lee*, 2023 IL App (4th) 220779, ¶ 67.

¶ 10 On November 29, 2023, our supreme court denied defendant’s petition for leave to appeal. *People v. Lee*, No. 130085 (Ill. Nov. 29, 2023). Defendant did not file a petition for *certiorari* with the United States Supreme Court. Accordingly, for all claims other than actual innocence, the statutory deadline for defendant to file a postconviction petition was August 27, 2024. See 725 ILCS 5/122-1(c) (West 2022); *People v. Perez*, 2023 IL App (4th) 220280, ¶ 12 (explaining how to calculate the postconviction deadline when a defendant does not file a petition for *certiorari*).

¶ 11 B. Postconviction Proceedings

¶ 12 On October 29, 2024—63 days after the deadline—defendant, through new counsel, filed his initial postconviction petition. The trial court advanced the petition to the second stage of proceedings and allowed defendant to amend the petition twice. For purposes of this appeal, the relevant pleading is defendant’s second amended petition.

¶ 13 1. *Defendant’s Second Amended Postconviction Petition*

¶ 14 In his second amended postconviction petition, defendant alleged (1) deprivations of his right to due process, (2) ineffective assistance of counsel, and (3) actual innocence. All the claims arose from the same underlying facts and were essentially alternative legal theories to present newly discovered evidence relating to UIC lab’s testing methods. Although defendant conceded that he did not file his initial petition within the statutory deadline, he alleged in his second amended petition that he lacked culpable negligence for the late filing. See 725 ILCS 5/122-1(c) (West 2024) (establishing deadlines for presenting postconviction claims other than actual innocence, which may be excused only if the defendant “alleges facts showing that the delay was not due to his or her culpable negligence”).

¶ 15 a. *Delta-8-THC Versus Delta-9-THC*

¶ 16 The primary issues defendant raised in his second amended petition related to recently discovered evidence showing that UIC lab was unable to distinguish between delta-8-THC and delta-9-THC in toxicology screens. This issue came to light after one of the attorneys who later ended up representing defendant in connection with these postconviction proceedings, Paul Moreschi, prompted an investigation.

¶ 17 Specifically, in late 2023, Moreschi alleged in court documents filed in a Du Page County case, *People v. Franco*, No. 19-CF-974 (Cir. Ct. Du Page County), that Bash gave misleading toxicology testimony in that case on matters that are not specifically relevant to this

appeal. When fellow forensic scientists submitted complaints against Bash, the American National Standards Institute National Accreditation Board (ANAB) investigated the complaints. Meanwhile, in January 2024, Bash resigned from her position with UIC lab after being notified she would not be reappointed. In February 2024, UIC lab terminated its service agreements with law enforcement agencies to analyze human biological samples. In early March 2024, ANAB determined that Bash provided “inaccurate and unqualified testimony” in connection with *Franco*. Prosecutors in Du Page County and Cook County notified the defendants in certain cases of ANAB’s conclusion, but defendant was never so notified.

¶ 18 In mid-March 2024, Moreschi spoke with Brendan Heffron, an employee of UIC lab, regarding whether the lab’s methodologies for identifying delta-9-THC in biological samples had been scientifically validated. This prompted the lab to conduct a quality assurance review on March 25, 2024. Following that testing, Heffron summarized the findings in a Corrective and Preventative Action Form: “In short, we are unable to distinguish between [delta-8-THC and delta-9-THC] using the current methods. It is unknown how many cases this may have affected as we have used this method to report the delta-9-THC isomer concentration since May 2018.” In mid-May 2024, UIC lab notified some prosecutors—including the state’s attorney of Boone County—of the issue, providing the following explanation:

“A recent quality assurance review of the instrumental methods used for the detection and quantitation of THC in 2024 has determined that the methodologies may not have been effectively separating the delta-8-THC isomer from delta-9-THC isomer in some cases. As a result, the THC detection and quantitative value reported may reflect a combined amount of both delta-8-THC and delta-9-THC, if both isomers were present. This could be important if the person whose body fluid

was analyzed has concurrently consumed a product with delta-8-THC and a product containing delta-9-THC.”

¶ 19 Boone County prosecutors did not notify defendant of this information. However, the attorneys who ultimately ended up representing defendant in connection with his postconviction petition, Moreschi and Donald Ramsell, learned of these issues independently of their work on this case before defendant spoke with them. Moreschi and Ramsell also obtained documentation showing that UIC lab ran similar validation experiments in March 2021, which purportedly likewise showed that its methodologies could not distinguish between delta-8-THC and delta-9-THC. UIC lab allegedly did not notify prosecutors or other potentially interested parties of the results of the March 2021 validation experiments.

¶ 20 As mentioned above, in the proceedings leading to his conviction, defendant admitted he was a frequent cannabis smoker and that he last used cannabis 27 hours before the March 26, 2018, accident. In his second amended postconviction petition, defendant did not provide any different or additional information about how or when he used substances that exposed him to THC before the accident. His theory as to why delta-8-THC could have been in his blood after the accident was that delta-8-THC was “a commonly encountered THC isomer in early 2018” that “could certainly have been ingested inadvertently as a component in cannabis plant material at the time.” In support of that proposition, defendant relied on a scientific journal reporting that one lab in Pennsylvania found that around 2% of the cannabinoid tests it performed in 2018 showed interference between delta-8-THC and delta-9-THC. The same article stated that although delta-8-THC is typically found in low concentrations in cannabis plants, some studies have shown that delta-8-THC may account for up to 10% of the total THC content in fresh cannabis samples. The article further explained that although it is not practical to produce large quantities of delta-8-THC

from cannabis plants, producers can use specialized extraction, isolation, distillation, and refinement processes to create substantial amounts of pure delta-8-THC that can be incorporated into products such as vape cartridges, extracts, and edibles.

¶ 21 Defendant's retained postconviction chemistry expert, Dr. Kevin Schug, did not indicate in his affidavit whether smoking cannabis would have resulted in defendant having *any* amount of delta-8-THC in his blood, let alone 27 hours after the last use. Rather than linking his opinions to the specific facts of defendant's case, Schug opined more generally that UIC lab's inability to distinguish between delta-8-THC and delta-9-THC meant that the results of its testing procedures were invalid and scientifically unacceptable.

¶ 22 b. Additional Allegations More Specifically Tied to Defendant's
Own Toxicology Results

¶ 23 The initial postconviction petition defendant filed on October 29, 2024, focused on the aforementioned recent developments relating to UIC lab. However, the second amended petition defendant filed on May 19, 2025, mentioned additional purported deficiencies in UIC lab's methodologies that were specifically linked to the testing done in his own case.

¶ 24 Defendant's retained postconviction expert did not address these deficiencies in a supplemental affidavit. Rather, as evidentiary support, defendant relied heavily on a report that Moreschi signed on May 19, 2025, recounting what Heffron purportedly told him on "March 28, 2025, and March 31, 2005 [*sic*]." According to Moreschi's report, Heffron reviewed the documents relating to defendant's 2018 toxicology testing, which the State had tendered to defendant's trial counsel in September 2019. Moreschi asserted that Heffron then informed him that certain aspects of the testing did not comply with UIC lab's standard operating procedures. The three deficiencies Heffron identified related to contamination in the system blank, measurement uncertainty, and an

anomalous test result.

¶ 25

i. *Contamination in the System Blank*

¶ 26

To test for the presence of delta-9-THC and other substances, Bash analyzed three separate aliquots of defendant's blood and then averaged the results. Defendant's three aliquots contained delta-9-THC concentrations of 6.0688, 6.1550, and 7.4370 nanograms per milliliter, respectively. Although the precise average of those amounts is 6.5536, in her report, Bash rounded the average down to 6.5. She then reported a measurement uncertainty of 0.6 nanograms per milliliter. This meant that with a 99.7% level of confidence, defendant's delta-9-THC concentration was between 5.9 and 7.1 nanograms per milliliter of whole blood, which was above the statutory 5-nanogram threshold.

¶ 27

One issue defendant identified in his second amended postconviction petition was that Bash's records showed irregularities with respect to the system blank. Defendant's contentions on this point were couched in scientific jargon, and he never clearly explained the implications of this issue to the ultimate question of whether he was over the legal limit for delta-9-THC. Accordingly, we will quote defendant's allegations rather than attempt to summarize:

"Page 88 of the Case File is the injection sequence spreadsheet for the batch of samples analyzed alongside three separate aliquots of [defendant's] blood sample, and, among its data, reflects the name, position in the injection sequence, type, retention time, and analysis result for those samples. (Exhibit D, Case File; Exhibit BB, Heffron Statement).

The first injected sample in that sequence was a system blank, a clean sample of the mobile phase, (water, combined with an organic solvent), which must demonstrate, through analysis, to be free from contamination in

order to ensure that 1) the instrument is free from carryover contamination from previously analyzed positive samples, (forensic, and control), and 2) that [UIC lab's] stock of the mobile phase components is also free from contaminants as it is used to reconstitute all forensic samples, and used in the preparation of blanks, matrix blanks, controls, standards, and calibrators. [UIC lab's] practices and procedures required the absence of any drugs of interest in the system blank, and [UIC lab's standard operating procedures] provide that all negative controls must show the absence of drugs of interest. (Exhibit D, Case File; Exhibit BB, Heffron Statement).

The injection sequence spreadsheet at Page 88 of the Case File reports the presence of [delta-9-THC] in the system blank—indicating contamination—and at a response strength equal to 33% of the response for [delta-9-THC] in the first aliquot of [defendant's] blood sample. Pages 90 and 91 contain the chromatography and spectrometry from the analysis of the blank mobile phase, and, at Page 91, confirm the reported presence of [delta-9-THC] in that system blank. (Exhibit D, Case File; Exhibit BB, Heffron Statement).

Pursuant to [UIC lab's] standard practices and procedures, the failure of that system blank to show the absence of the drug of interest should have been resolved in order to verify that the instrument, and the laboratory's stock of mobile phase components were free from contamination, and, once resolved, the entire batch of samples—including the three aliquots of [defendant's] blood sample—should have been repeated, (a new analysis

should have been conducted). (Exhibit BB, Heffron Statement).” (Emphasis omitted.)

Heffron also told Moreschi that defendant’s records showed there were no additional system blanks run immediately before Bash analyzed each of defendant’s three aliquots.

¶ 28 *ii. Measurement Uncertainty*

¶ 29 A second issue defendant raised pertained to the measurement uncertainty that Bash reported as part of defendant’s toxicology results—plus or minus 0.6 nanograms per milliliter. Defendant alleged, on information and belief, that Bash relied on calculations performed in April 2016 to apply a measurement uncertainty of 9.9% for the average results of the three aliquots of blood she analyzed. According to defendant, that measurement uncertainty correlated to what UIC lab applied in other unrelated cases between 2016 and 2021. Defendant alleged that in January 2022, UIC lab began applying a measurement uncertainty of approximately 20% as a result of external auditing by ANAB. UIC lab then reevaluated some of the analyses it had performed within the previous year and issued amended reports in those cases, increasing the measurement uncertainty to approximately 20%. From this evidence, defendant deduced that the measurement uncertainty in his own case, although the analysis was performed in 2018, was likewise underreported by 50%.

¶ 30 *iii. An Anomalous Result*

¶ 31 The third issue defendant raised related to Bash’s failure to reject an anomalous result when she analyzed his blood. As mentioned previously, UIC lab’s records showed that the three aliquots of defendant’s blood contained delta-9-THC concentrations of 6.0688, 6.1550, and 7.4370 nanograms per milliliter, respectively. According to defendant, UIC lab’s standard practices and procedures indicated that such calculations must fall within the measurement

uncertainty of the mean. Here, the mean of the three results was a little more than 6.5 nanograms per milliliter and the measurement uncertainty was reported as 0.6 nanograms per milliliter. Thus, because defendant's third aliquot was more than 0.6 nanograms per milliliter above the mean, defendant alleged that Bash should have either done a retest or discarded the third aliquot when calculating the mean. Defendant asserted that calculating the mean using two aliquots rather than three would "increase the applicable measurement uncertainty to a calculable degree" that defendant did not identify in his second amended postconviction petition.

¶ 32 c. Allegations of Lack of Culpable Negligence

¶ 33 To justify the late filing of his initial postconviction petition, defendant alleged he lacked culpable negligence for the delay. In his second amended postconviction petition, defendant asserted that he learned about "the most significant of the *** newly discovered evidence" when he spoke with Ramsell for the first time on July 29, 2024. Defendant did not allege when he first spoke with Moreschi, nor did he identify any specific evidence discussed in the initial petition that he discovered *after* July 29, 2024. Thus, it appears from the second amended postconviction petition that Ramsell and Moreschi were aware of the flaws attendant to UIC lab's methodology prior to July 29, 2024, but that it was only that day when defendant was connected with counsel and learned of this information.

¶ 34 Defendant alleged that between July 29, 2024, and October 29, 2024 (the date he filed his initial postconviction petition), his attorneys worked diligently by gaining access to the evidence and record of his case, reviewing the record, interviewing trial counsel, and hiring a consulting expert to review the matter and ultimately sign an affidavit. According to the second amended petition, on August 21, 2024—just six days before the postconviction filing deadline—defendant's trial counsel provided Ramsell with a copy of the UIC lab records that the State had

tendered in discovery in September 2019. Defendant asserted that “no level of diligence could have resulted in the filing of the original petition, under the described circumstances, within the statutory due date of August 27, 2024.”

¶ 35 Defendant further noted that his original petition was meant to be thorough, as there were no guarantees the trial court would have allowed him to amend or supplement his petition. Defendant also argued that because the newly discovered evidence included *Brady* material that was in some cases secreted from the public (apparently, defendant was referencing his allegation that UIC lab employees first learned in March 2021 that the lab’s methods could not distinguish delta-8-THC from delta-9-THC in blood screens), it would offend notions of fairness and due process for the State to argue that his petition was untimely. See *Brady v. Maryland*, 373 U.S. 83, 87 (1963) (holding that “the suppression by the prosecution of evidence favorable to an accused upon request violates due process where the evidence is material either to guilt or to punishment, irrespective of the good faith or bad faith of the prosecution”).

¶ 36 2. *The State’s Motion to Dismiss the Second Amended Postconviction Petition*

¶ 37 The State moved to dismiss defendant’s second amended postconviction petition. According to the State, defendant’s claims, other than actual innocence, were untimely, and he did not allege sufficient facts demonstrating his lack of culpable negligence. The State also maintained that defendant failed to make a substantial showing of a constitutional violation, including a claim of actual innocence. One of the State’s points was that it did not matter for purposes of this case whether UIC lab could distinguish between delta-8-THC and delta-9-THC, as defendant failed to show that he had delta-8-THC in his system at the time of the March 26, 2018, accident.

¶ 38 3. *The Trial Court’s Ruling and Defendant’s Notice of Appeal*

¶ 39 On October 13, 2025, the trial court granted the State’s motion to dismiss

defendant's second amended postconviction petition. The court found that defendant's claims, other than actual innocence, were untimely, as he did not allege sufficient facts to support his contention that he lacked culpable negligence for the late filing. The court reasoned that defendant became aware of an alleged *Brady* violation on or about July 29, 2024, when he retained postconviction counsel. The court acknowledged that as of that date, the defense may not have had sufficient documents, in particular an expert affidavit, to attach to a petition. However, the court found it significant that defendant did not allege why it took until August 21, 2024, for his postconviction attorneys to obtain discovery materials that were in the possession of defendant's trial counsel. The court deemed it implausible that defendant's trial counsel would not immediately turn over his file to postconviction counsel, knowing that defendant was running up against a deadline to file a petition. Moreover, the court emphasized that defendant did not detail "the actions necessary to obtain an expert, including when the expert was chosen and provided all the information necessary to render said opinion." The court continued:

"[T]he expert's affidavit is bare bones. It does not appear that much was done by the expert in preparing his opinion; much of the opinion is based upon a review of testimony provided [by Bash] in an unrelated case. *** [I]t does not appear that the expert had to conduct any tests, perform any interviews, or even review the common record. It appears that he simply looked at the discovery as to the testing method used and results in reaching his opinion. It does not appear that he reviewed any other evidence that may have existed in the common record or outside of the common record. There is simply no assertions [*sic*] as to why selecting an expert and the expert rendering an opinion would take so long."

The court found that "[a]ny deficiencies in the basis for the delay are attributable to [defendant]

and act as a bar to pursuing” claims other than actual innocence.

¶ 40 The trial court further found that defendant failed to make a substantial showing of actual innocence to proceed to a third-stage evidentiary hearing. For purposes of its analysis, the court accepted as true defendant’s allegation that UIC lab used a scientific method that had difficulty distinguishing delta-8-THC from delta-9-THC. The court recognized that this constituted newly discovered evidence. “However, missing from the petition and affidavits is any evidence that [defendant] consumed anything that would have contained [delta-8-THC],” and defendant’s theory in the underlying proceedings “was that he was a chronic cannabis consumer.” Thus, the court found that defendant’s new evidence was not material and noncumulative, as defendant’s expert neither addressed the fact that defendant held himself out as a chronic cannabis user nor explained how the shortcomings in UIC lab’s methodology applied to this particular case. Ultimately, the court found that the issues defendant raised relating to the testing methodology were “simply not relevant or probative” as to his innocence. For the same reasons, the court determined that defendant could not meet the requirement to show that his new evidence was conclusive for purposes of an actual innocence claim.

¶ 41 Defendant filed a timely notice of appeal.

¶ 42 II. ANALYSIS

¶ 43 On appeal, defendant argues that (1) he alleged facts showing a lack of culpable negligence for his delay in filing the initial postconviction petition and (2) his second amended petition made a substantial showing of actual innocence based on newly discovered evidence that UIC lab could not differentiate between delta-8-THC and delta-9-THC. The State responds that the trial court correctly dismissed the petition.

¶ 44 The Post-Conviction Hearing Act (725 ILCS 5/122-1 *et seq.* (West 2024))

“provides a means for individuals serving criminal sentences to assert that their convictions resulted from substantial denials of their constitutional rights.” *People v. Hilliard*, 2023 IL 128186, ¶ 18. There are three stages of postconviction proceedings. At the first stage, the court reviews the petition independently to determine whether it is “ ‘frivolous or is patently without merit.’ ” *Hilliard*, 2023 IL 128186, ¶ 19 (quoting 725 ILCS 5/122-2.1(a)(2) (West 2018)). If the court does not summarily dismiss the petition pursuant to this standard, the matter proceeds to the second stage. *Hilliard*, 2023 IL 128186, ¶ 19. At that point, the State may answer the petition or move to dismiss it. *People v. Domagala*, 2013 IL 113688, ¶ 33. If the defendant’s petition and accompanying documentation make a substantial showing of a constitutional violation, the matter proceeds to a third-stage evidentiary hearing. *Domagala*, 2013 IL 113688, ¶¶ 33-34. At that evidentiary hearing, the trial court “serves as the fact finder” by assessing witness credibility, weighing testimony, resolving evidentiary conflicts, and ultimately determining whether the defendant is entitled to postconviction relief. *Domagala*, 2013 IL 113688, ¶ 34.

¶ 45 Here, the trial court dismissed defendant’s second amended postconviction petition at the second stage of proceedings. The sole focus at the second stage is “the legal sufficiency of the petition.” *Domagala*, 2013 IL 113688, ¶ 35. Accordingly, in evaluating whether a defendant made a substantial showing of a constitutional violation at the second stage, the trial court may not make factual findings or determine credibility. *Domagala*, 2013 IL 113688, ¶ 35. Rather, the court must accept as true all well-pleaded facts in the petition that are not “affirmatively refuted by the record.” *Domagala*, 2013 IL 113688, ¶ 35. The question is whether the defendant’s well-pleaded allegations, if proven at an evidentiary hearing, would justify granting postconviction relief. *Domagala*, 2013 IL 113688, ¶ 35. We review *de novo* an order dismissing a petition at the second stage. *People v. Huff*, 2024 IL 128492, ¶ 13.

¶ 46

A. Timeliness of the Initial Petition

¶ 47

Defendant first challenges the trial court’s determination that his claims, other than actual innocence, were untimely. Although he acknowledges he filed his initial postconviction petition after the statutory deadline, he reiterates the points he raised below in support of his claim that he lacked culpable negligence for the delay.

¶ 48

“[T]imeliness is not an inherent element of the right to bring a postconviction petition and, thus, is not a jurisdictional prerequisite.” *People v. Lighthart*, 2023 IL 128398, ¶ 41. Rather, it is “akin to a statute of limitations,” which the State may invoke or waive as it deems fit. *Lighthart*, 2023 IL 128398, ¶ 41. Where the State cites untimeliness as a basis to dismiss a petition, it is incumbent on the defendant to “allege[] facts showing that the delay was not due to his or her culpable negligence.” 725 ILCS 5/122-1(c) (West 2024). Culpable negligence means “ ‘something greater than ordinary negligence and is akin to recklessness.’ ” *People v. Johnson*, 2017 IL 120310, ¶ 26 (quoting *People v. Bocclair*, 202 Ill. 2d 89, 108 (2002)). For example, culpable negligence may involve “a conscious choice of a course of action, in disregard of the consequences that might follow.” (Internal quotation marks omitted.) *People v. Rissley*, 206 Ill. 2d 403, 419 (2003).

¶ 49

Although a court must accept as true all well-pleaded facts in a postconviction petition for purposes of addressing a second-stage motion to dismiss (*Domagala*, 2013 IL 113688, ¶ 35), it is very difficult for a defendant to meet the heavy burden of showing that a lack of culpable negligence excuses an untimely pleading (*People v. Kirilyuk*, 2024 IL App (2d) 230154, ¶ 33). The relevant question for appellate review is “whether [the] defendant’s allegations as presented to the circuit court are sufficient to establish a lack of culpable negligence so as to avoid dismissal of the petition on the basis that it was time-barred.” *Rissley*, 206 Ill. 2d at 418. Because this appeal involves a second-stage dismissal, we review the court’s ruling with respect to this issue *de novo*.

People v. Lander, 215 Ill. 2d 577, 586 (2005); *Kirilyuk*, 2024 IL App (2d) 230154, ¶ 33.

¶ 50 At the outset, we note that defendant’s initial postconviction petition, filed on October 29, 2024, challenged the reliability of UIC lab’s methodology in light of newly discovered evidence showing the lab failed to validate its analytical processes and could not distinguish between delta-8-THC and delta-9-THC in toxicology screens. Defendant subsequently amended his petition to include additional information in support of his claims based on things that one of his attorneys, Moreschi, heard Heffron say on “March 28, 2025, and March 31, 2005 [sic],” about purported deficiencies specific to defendant’s testing. In his second amended postconviction petition, defendant attempted to demonstrate his lack of culpable negligence for the delayed filing of the initial petition by outlining his attorneys’ actions between July 29, 2024 (when defendant first spoke with Ramsell) and October 29, 2024. Defendant did not allege that the information Moreschi subsequently heard Heffron say, and which was used to supplement defendant’s claims in an amended petition, justified the late filing of the initial petition. Thus, for purposes of determining whether defendant sufficiently alleged his lack of culpable negligence for failing to file a postconviction petition by the statutory deadline, we will focus on defendant’s allegations regarding what occurred up to October 29, 2024.

¶ 51 It is clear from reviewing the allegations of defendant’s second amended postconviction petition that by July 29, 2024, attorneys Moreschi and Ramsell were aware of the recent developments regarding UIC lab that defendant later documented in his initial postconviction petition. Chief among the developments were that (1) in February 2024, shortly after Bash resigned from her position amid an external investigation by ANAB, UIC lab terminated its contracts with law enforcement agencies to test human samples; (2) in March 2024, ANAB determined that Bash provided “inaccurate and unqualified testimony” in connection with

toxicology results in the *Franco* case; (3) in May 2024, UIC lab informed prosecutors that a recent quality assurance review revealed that the testing processes it had used for years could not distinguish between delta-8-THC and delta-9-THC in some cases; and (4) personnel at UIC lab may have known about that flaw in its methods for several years before the lab disclosed the problem, or at least should have discovered the issue earlier through routine testing to ensure its processes and results were valid. On July 29, 2024, defendant first spoke with Ramsell, who, along with Moreschi, then started working on defendant's behalf to file a postconviction petition. Thus, at that point—29 days before the August 27, 2024, deadline to file an initial petition—both defendant and his attorneys knew about the potential bases for postconviction claims. Defendant has never alleged that either he or his attorneys were unaware of the due date for filing the initial petition.

¶ 52 On appeal, defendant emphasizes that the key evidence supporting his claims was neither discoverable nor publicly available during much of the time between when the supreme court denied his petition for leave to appeal (November 29, 2023) and when the initial petition was due (August 27, 2024). However, there is no discovery rule that tolls the deadline for filing a postconviction petition. See *People v. Davis*, 351 Ill. App. 3d 215, 217 (2004) (“[W]e conclude that the discovery rule simply does not apply in postconviction proceedings.”). Therefore, for purposes of evaluating whether defendant lacked culpable negligence for the delayed filing, the dispositive issue is not simply that he discovered new evidence on July 29, 2024, and then filed his initial petition three months later. Rather, we must consider all the circumstances, including whether defendant provided a reasonable excuse for failing to file a timely petition within 29 days after he and his attorneys were aware of the new evidence forming the basis for his claims.

¶ 53 In his second amended postconviction petition, defendant alleged that between July

29, 2024, and October 29, 2024, his attorneys worked diligently on the case and retained an expert. However, within that three month time period, the only specific date defendant identified on which the attorneys took action was August 21, 2024, when his trial counsel gave Ramsell a copy of a 165-page document relating to defendant's toxicology testing. The second amended postconviction petition did not explain why it took until August 21, 2024—six days before the deadline to file a petition—for defendant's postconviction attorneys to obtain a copy of those records, which the State had tendered to trial counsel in September 2019 in PDF form on a disk. Transferring some records from one attorney to another (presumably by e-mail, considering that defendant's trial counsel alleged in an affidavit that he continued to maintain custody of the original disk after providing Ramsell a copy of one of the four PDF files on the disk) does not seem to be a task that would require three weeks to complete. Notably, defendant did not allege when his postconviction attorneys reached out to trial counsel to obtain a copy of that discovery.

¶ 54 Moreover, the second amended postconviction petition did not allege what specific work defendant's postconviction attorneys did on the case before they obtained 165 pages of discovery materials from trial counsel on August 21, 2024. From defendant's allegations, it seems that the defense did not even attempt to retain an expert until sometime after August 21, 2024 ("Once *all material* was reviewed, digested, and discussed, it was determined that it was necessary to retain a consulting expert in the field of toxicology." (Emphasis added.)). Defendant did not specify when he retained his expert or provided the expert materials to review. Nor did defendant allege when his attorneys began drafting a petition on his behalf or engaged in any of the tasks they said they completed over the course of three months. Ultimately, although defendant claimed that "no level of diligence could have resulted in the filing of the original petition *** within the statutory due date of August 27, 2024," defendant did not plead facts suggesting that he and his

attorneys operated with a sense of urgency to attempt to get an initial petition on file by the deadline, despite having 29 days to do so.

¶ 55 To be sure, it is obvious from the record that defendant’s postconviction attorneys put a substantial amount of time and effort into preparing a detailed initial petition on his behalf. That petition was 28 pages long, included some sections that were single-spaced, contained an extensive discussion of case law, and was supported by 27 exhibits, including an expert affidavit signed on October 27, 2024. In assessing whether defendant lacked culpable negligence, we cannot ignore that his initial petition—filed 63 days after the statutory deadline even though he discovered the new evidence forming the basis for his claims 29 days before the deadline—*far* exceeded the “limited amount of detail” necessary to “make out a claim that is arguably constitutional,” which is the “low” pleading standard that applies at the first stage of postconviction proceedings. *People v. Hodges*, 234 Ill. 2d 1, 9 (2009); see *People v. Tate*, 2012 IL 112214, ¶¶ 11-12 (explaining that this same standard applies where an attorney drafts a defendant’s initial postconviction petition). Indeed, the Post-Conviction Hearing Act provides that “[a]rgument and citations and discussion of authorities shall be omitted from the petition.” 725 ILCS 5/122-2 (West 2024).

¶ 56 We recognize that defendant’s attorneys were obligated to conduct a reasonable investigation into the factual bases for defendant’s claims before filing any pleading on his behalf. See Ill. S. Ct. R. 137(a) (eff. Jan. 1, 2018) (providing that an attorney’s signature on a pleading certifies that, to the attorney’s “knowledge, information, and belief formed after reasonable inquiry,” the pleading is “well grounded in fact and is warranted by existing law or a good-faith argument for the extension, modification, or reversal of existing law”). Here, defendant did not demonstrate that his attorneys’ ethical obligations would have prevented them from filing a less comprehensive but timely initial petition on his behalf with the newly discovered evidence in their

possession. Indeed, for purposes of surviving first-stage-postconviction scrutiny, defendant could have pleaded and supported his claims simply by (1) alleging, on information and belief, that he was exposed to delta-8-THC based on his use of cannabis before the fatal accident, (2) attaching UIC lab's letter to prosecutors admitting that its methods could not distinguish delta-8-THC from delta-9-THC, and (3) alleging, on information and belief, that personnel from UIC lab knew or at least should have known before defendant's trial that the lab could not distinguish those isomers. The record does not show why it was necessary or appropriate to delay filing an initial petition until an expert could review the matter.

¶ 57 We have no doubt that defendant's postconviction attorneys wanted to present the strongest possible claims on his behalf, accompanied by the most convincing supporting documentation they could muster. However, the record contains no facts suggesting that defendant and his attorneys attempted to meet the August 27, 2024, filing deadline. To the contrary, in taking three months to file the initial petition, it seems that nobody involved put forth any effort to expedite the process. Defendant and his attorneys essentially opted for a strategy of asking for forgiveness rather than permission. The prudent course of action under the circumstances would have been to file a timely petition outlining defendant's claims with an eye toward the pleading standard that applies at the first stage of proceedings, accompanied by an explanation of the circumstances. Defendant could even have contemporaneously filed a motion seeking leave to amend or supplement the petition by a date certain. See *People v. White*, 2013 IL App (2d) 120205, ¶ 9 (recognizing that a trial court has discretion to allow a defendant to amend a petition "at any stage of postconviction proceedings, including the first stage, prior to final judgment"); *People v. Brown*, 336 Ill. App. 3d 711, 716-17 (2002) (explaining that a "trial court should exercise its discretion liberally in favor of allowing amendments" if doing so "will further the ends of justice").

Defendant points out that there was no guarantee the trial court would have allowed leave to amend had he filed a sparser but timely petition. But there would have been no reasonable basis to deny a request for leave to amend had defendant explained that (1) he filed an initial petition in good faith to comply with the statutory deadline, (2) newly discovered evidence showed that personnel from UIC labs may have known before defendant's trial that its methods could not distinguish between delta-8-THC and delta-9-THC, and (3) he wished to submit a more comprehensive petition supported by additional exhibits and/or argumentation.

¶ 58 Ultimately, defendant and his attorneys chose to wait until 63 days after the deadline to file a substantially more comprehensive petition than was required at the first stage—a petition they ended up amending twice anyway. By pursuing this path, defendant undertook the burden of having to convince the trial court, and ultimately this court, to excuse his late filing based on a lack of culpable negligence, which is a very difficult standard to meet. *Kirilyuk*, 2024 IL App (2d) 230154, ¶ 33. In other words, it appears that defendant knowingly allowed the filing deadline to pass, gambling that either the State would not invoke timeliness as a defense or that he could avail himself of the statutory “safety valve” that applies where a petitioner lacks culpable negligence for missing the deadline. (Internal quotation marks omitted.) *Rissley*, 206 Ill. 2d at 420. There is no way to characterize that gamble as anything other than “a conscious choice of a course of action, in disregard of the consequences that might follow.” (Internal quotation marks omitted.) *Rissley*, 206 Ill. 2d at 419. Unfortunately, defendant did not plead sufficient facts in his second amended petition to implicate this safety valve.

¶ 59 We recognize that defendant's postconviction attorneys likely controlled when the initial petition got filed. However, “a defendant who retains private counsel is bound by the actions of his attorney.” *People v. Johnson*, 2018 IL 122227, ¶ 21.

¶ 60 Given the totality of the circumstances, we hold that the trial court correctly found that defendant failed to allege facts supporting that he lacked culpable negligence for filing the initial postconviction petition more than two months after the deadline. Accordingly, the court appropriately dismissed all claims as untimely, other than the actual innocence claim.

¶ 61 B. Actual Innocence

¶ 62 The only remaining issue is whether defendant made a substantial showing of actual innocence to warrant a third-stage evidentiary hearing.

¶ 63 Under the Illinois Constitution, postconviction petitioners may “assert a freestanding claim of actual innocence based on newly discovered evidence.” *People v. Ortiz*, 235 Ill. 2d 319, 331 (2009). Our supreme court has explained the parameters of such claims as follows:

“To establish a claim of actual innocence, the supporting evidence must be (1) newly discovered, (2) material and not cumulative, and (3) of such conclusive character that it would probably change the result on retrial. [Citations.] Newly discovered evidence is evidence that was discovered after trial and that the petitioner could not have discovered earlier through the exercise of due diligence. [Citation.] Evidence is material if it is relevant and probative of the petitioner’s innocence. [Citation.] Noncumulative evidence adds to the information that the fact finder heard at trial. [Citation.] Lastly, the conclusive character element refers to evidence that, when considered along with the trial evidence, would probably lead to a different result. [Citation.] The conclusive character of the new evidence is the most important element of an actual innocence claim. [Citation.]

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. [Citation.] The new evidence need not be entirely dispositive to be likely to alter the results on retrial. [Citation.] Probability, rather than certainty, is the key in considering whether the fact finder would reach a different result after considering the prior evidence along with the new evidence." *People v. Robinson*, 2020 IL 123849, ¶¶ 47-48.

We review *de novo* the trial court's ruling dismissing defendant's actual innocence claim at the second stage of postconviction proceedings. *People v. Sanders*, 2016 IL 118123, ¶ 31. The issue for our consideration is "whether the allegations in the petition, liberally construed in favor of the petitioner and taken as true, are sufficient to invoke relief under the [Post-Conviction Hearing] Act." *Sanders*, 2016 IL 118123, ¶ 31. More specifically, we must determine whether defendant's second amended postconviction petition made "a substantial showing of actual innocence such that an evidentiary hearing is warranted." *Sanders*, 2016 IL 118123, ¶ 37.

¶ 64 In its appellee's brief, the State suggests that defendant should be held to the higher standard for presenting his actual innocence claim that applies where a person advances such claim after having pleaded guilty. See *People v. Reed*, 2020 IL 124940, ¶ 49. Here, however, defendant did not plead guilty, but rather proceeded to a bench trial with stipulated evidence and presented a defense to his charges. The State has not cited authority indicating that the standard articulated in *Reed* should apply here. At any rate, as explained below, defendant has not satisfied the typical standard associated with presenting an actual innocence claim, so he necessarily cannot establish a higher standard.

¶ 65 Defendant was convicted of aggravated DUI based on having a delta-9-THC concentration exceeding five nanograms per milliliter of whole blood. 625 ILCS 5/11-501(a)(7), (d)(1)(F), 11-501.2(a)(6) (West 2018). His conviction depended on UIC lab's conclusion that

within two hours after the fatal car accident on March 26, 2018, his delta-9-THC concentration was 6.5 nanograms per milliliter of whole blood, plus or minus 0.6 nanograms per milliliter. In these postconviction proceedings, defendant did not claim to possess evidence showing that he was *actually* under the legal delta-9-THC threshold at the time of the accident. Rather, he challenged the reliability of UIC lab’s analytical methods in an attempt to undermine confidence in the lab’s conclusion that his delta-9-THC concentration exceeded the legal limit. Ultimately, we hold that defendant did not fit the pieces together to make a substantial showing of actual innocence to justify an evidentiary hearing.

¶ 66 The primary basis for defendant’s actual innocence claim was that UIC lab’s testing methods could not distinguish delta-8-THC from delta-9-THC in blood samples. Viewed in the light most favorable to defendant, we accept that fact as true for purposes of the second stage of postconviction proceedings. Indeed, UIC lab admitted as much in letters it sent to prosecutors in May 2024. We also accept that this was newly discovered and noncumulative evidence. Nevertheless, defendant is not “actually innocent” of the crime for which he was convicted unless he can show that UIC lab’s inability to distinguish one THC isomer from another probably impacted his case in a manner that “places the trial evidence in a different light and undermines *** confidence in the judgment of guilt.” *Robinson*, 2020 IL 123849, ¶ 48.

¶ 67 In the proceedings leading to his conviction, defendant admitted he was a frequent and long-term cannabis smoker, and he claimed he last used cannabis 27 hours before the March 26, 2018, accident. In his second amended postconviction petition, defendant did not claim that he was exposed to THC from any source other than smoking cannabis. For example, he did not claim that in the hours or days before the accident he used any product that was synthetically fortified with delta-8-THC. Rather, his theory was that he could have had delta-8-THC in his system simply

from using cannabis.

¶ 68 Defendant failed to make a substantial showing that smoking cannabis could have resulted in him having *any* delta-8-THC in his blood 27 hours after his last use, let alone in such quantity as to cast doubt on UIC lab's conclusion that he was over the legal limit for delta-9-THC. Tellingly, defendant's postconviction chemistry expert did not address whether smoking cannabis would have exposed defendant to delta-8-THC. Rather, in an apparent attempt to make that connection, defendant relied on information from a scientific journal to the effect that (1) a laboratory in Pennsylvania found that around 2% of the cannabinoid tests it performed in 2018 showed interference between delta-8-THC and delta-9-THC and (2) although delta-8-THC is typically found in low concentrations in cannabis plants, some studies have shown that delta-8-THC may account for up to 10% of the total THC content in fresh cannabis samples. Presumably, defendant wanted the trial court to focus on that 10% statistic, and he repeats it in his reply brief on appeal. However, unlike what this article discussed, UIC lab did not analyze a fresh cannabis sample in connection with defendant's case, but rather a blood sample taken more than a day after defendant claimed he last smoked. Defendant did not allege, much less make a substantial showing, that 10% (or any percent, for that matter) of the THC in the cannabis he used 27 hours before the accident was delta-8-THC.

¶ 69 Even were we to entertain the unsubstantiated assumption that 10% of the THC in the cannabis defendant used was delta-8-THC, defendant provided no information in his second amended postconviction petition about how that delta-8-THC would have metabolized in his body over the course of 27 hours in comparison with delta-9-THC. In other words, there is simply no basis in the record to connect any amount of delta-8-THC that may have been present in the cannabis defendant smoked to the blood draw more than 27 hours later.

¶ 70 Moreover, even if we were to make the *completely* unsubstantiated assumption that 10% of the THC in defendant's blood sample was delta-8-THC, that still would not do much in itself to advance defendant's actual innocence claim. Again, his sample revealed a delta-9-THC concentration of 6.5 nanograms per milliliter of whole blood, plus or minus 0.6 nanograms per milliliter. Ten percent of 6.5 nanograms is 0.65 nanograms. Thus, accounting for the reported measurement uncertainty, defendant's blood sample would still have a delta-9-THC concentration that was above the legal limit, at the lowest end ($6.5 - 0.65 - 0.6 = 5.25$).

¶ 71 For these reasons, the trial court correctly determined that the evidence defendant presented relating to UIC lab's inability to distinguish between delta-8-THC and delta-9-THC was neither material to the specific facts of his case nor so conclusive that it would probably change the result on retrial. Absent evidence supporting a conclusion that defendant had delta-8-THC in his blood at the time of the accident in a quantity casting doubt on whether he was over the legal limit for delta-9-THC, there was no factual dispute or credibility issue requiring a third-stage evidentiary hearing.

¶ 72 In his second amended complaint, defendant identified additional purported issues that were linked to his own toxicology records: (1) contamination in the system blank, (2) an underreported measurement uncertainty, and (3) erroneously including in the calculated mean the amount of delta-9-THC from one of the three aliquots tested that was more than 10% higher than the mean. In the portion of his appellant's brief addressing his argument regarding actual innocence, defendant references these issues only briefly. He does not argue that these matters made a substantial showing of actual innocence independently of the issues relating to delta-8-THC, which we have already addressed.

¶ 73 Nevertheless, these matters do not change our conclusion that defendant failed to

make a substantial showing of actual innocence. Curiously, defendant presented evidence of these testing deficiencies primarily through his own counsel's written report detailing his understanding of what Heffron, an employee of UIC lab, told him. Defendant neither provided an affidavit from Heffron nor alleged why such affidavit was unobtainable. Moreover, the issues defendant identified were certainly matters that might have been used to impeach Bash, had defendant not elected to stipulate at trial that the instruments she used "were working properly and the testing performed is generally accepted in the scientific community." However, the purported flaws in Bash's methods do not tend to support a conclusion that defendant probably had a whole-blood concentration of delta-9-THC under the legal limit at the time of the accident.

¶ 74 The second amended postconviction petition alleged that there was contamination in the system blank, which was the first injection sequence Bash ran and ought to have been free of delta-9-THC. Defendant also alleged that Bash should have, but did not, run an additional system blank before analyzing each aliquot of blood. In his statement of facts in his brief on appeal, defendant asserts that his "results were necessarily contaminated." However, defendant did not make that specific allegation in his second amended postconviction petition in such direct terms. His allegations in his petition with respect to this matter were much more abstruse and defy easy summary, which is why we quoted the allegations at length in our statement of facts. In his petition, defendant described the system blank as some kind of control test. He did not expressly say that contamination in the system blank either contaminated the blood samples themselves or necessarily inflated the amount of delta-9-THC that Bash detected in his blood. Rather, defendant contended that contamination in the initial system blank should have triggered a retest of defendant's three aliquots of blood. As best we can tell, the issue defendant identified relating to the system blank was a potential anomaly in the testing process, though he did not explain in

concrete terms how that anomaly meant his results were wrong. Absent any input from defendant's retained postconviction expert on this issue or any further context about what this all means, we cannot say that defendant's allegations relating to contamination in the system blank made a substantial showing of actual innocence to justify a third-stage evidentiary hearing.

¶ 75 Defendant also alleged in his second amended postconviction petition that the measurement uncertainty used in his testing was 9.9%, a figure he alleged, on information and belief, was derived from calculations performed in April 2016. Defendant alleged that beginning in January 2022, UIC lab increased the measurement uncertainty to approximately 20% as a result of external auditing by ANAB and then issued amended reports for some analyses performed within the previous year. Even if we assume that UIC lab should have applied a 20% measurement uncertainty to defendant's results, he would still have been over the legal limit for delta-9-THC. Specifically, the three aliquots tested revealed delta-9-THC concentrations of 6.0688, 6.1550, and 7.4370 nanograms per milliliter of whole blood, respectively. Averaging those figures results in a delta-9-THC concentration of 6.5536 nanograms per milliliter, which Bash rounded down to 6.5 in her report. Applying a 20% measurement uncertainty to 6.5 nanograms per milliliter and then identifying the lowest end of the range of uncertainty still means that defendant was over the legal limit for delta-9-THC ($6.5 \times .2 = 1.3$; $6.5 - 1.3 = 5.2$).

¶ 76 Finally, defendant alleged in his second amended postconviction petition that the results of the third aliquot tested (the highest result) should have been disregarded because it deviated from the mean by an amount exceeding the measurement uncertainty. Accordingly, defendant maintained that this should have either triggered a retest or that this result should have been discarded when calculating the mean. However, had UIC lab applied a 20% measurement uncertainty like defendant claims should have been done, the highest result would *not* have

deviated from the mean by more than the measurement uncertainty and thus would not have had to be excluded. Alternatively, if we stick with the measurement uncertainty that UIC labs calculated (0.6 nanograms per milliliter) and exclude the highest of the three results, defendant was still over the legal limit for delta-9-THC at the lowest end of the range of uncertainty $((6.0688 + 6.1550) \div 2 = 6.1119; 6.1119 - 0.6 = 5.5119)$. Defendant alleged that calculating the mean using the results of testing two aliquots rather than three “would increase the applicable measurement uncertainty to a calculable degree.” However, defendant did not specify what the measurement uncertainty would have been if the results of only two aliquots had been used to calculate the mean.

¶ 77 All this to say, defendant has not alleged facts indicating that flaws in UIC lab’s testing methodology probably impacted his case in a way that “places the trial evidence in a different light and undermines the court’s confidence in the judgment of guilt.” *Robinson*, 2020 IL 123849, ¶ 48. In summary, defendant stipulated at trial that Bash would testify that he had an illegal amount of delta-9-THC in his blood after the March 26, 2018, accident. In these postconviction proceedings, defendant has not alleged facts making a substantial showing that he had delta-8-THC in his system at the time of the accident in a quantity that could have affected his toxicology results. Defendant’s arguments about measurement uncertainty and one anomalous test result do not withstand scrutiny when looking at the underlying math. With respect to the issue of contamination in the system blank, defendant did not fit the pieces together to show why this supports a claim of actual innocence. Accordingly, we hold that the trial court properly granted the State’s motion to dismiss defendant’s actual innocence claim.

¶ 78 III. CONCLUSION

¶ 79 For the reasons stated, we affirm the trial court’s judgment.

¶ 80 Affirmed.