2026 IL App (1st) 241397-U

SECOND DIVISION
November 17, 2026

No. 1-24-1397

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).

IN THE
APPELLATE COURT OF ILLINOIS
FIRST JUDICIAL DISTRICT

THE PEOPLE OF THE STATE OF ILLINOIS,	)	Appeal from the
	)	Circuit Court of
Plaintiff-Appellee,	)	Cook County.
	)	
v.	)	No. 05CR11283
	)	
CORDELL PERRY,	)	Honorable
	)	Charles P. Burns,
Defendant-Appellant.	)	Judge Presiding.

JUSTICE McBRIDE delivered the judgment of the court.
Presiding Justice D.B. Walker and Justice Van Tine concurred in the judgment.

ORDER

¶ 1 *Held*: Because postconviction counsel provided reasonable assistance, we affirm the denial of defendant's petition following an evidentiary hearing.

¶ 2 Defendant Cordell Perry appeals from the trial court's denial of postconviction relief following a third stage evidentiary hearing and argues that his postconviction counsel provided unreasonable assistance. Specifically, he contends that his postconviction counsel failed to adequately present defendant's claim of actual innocence based on the recantation of an eyewitness and to develop a claim that the eyewitness's identification was coerced by police.

¶ 3 Following a jury trial, defendant was convicted of first degree murder in the April 2005 shooting death of Denzel Calhoun at Magnum Motors, located near Cicero and Wabansia Avenues in Chicago. He was subsequently sentenced to 65 years in prison. We recount the evidence presented at defendant's jury trial only as necessary for our resolution of the issues raised on appeal. A full discussion of the evidence presented at defendant's trial is set forth in his direct appeal. See *People v. Perry*, No. 1-07-2761 (2009) (unpublished order pursuant to Supreme Court Rule 23).

¶ 4 Latavia Hayden, Calhoun's girlfriend, testified that she accompanied Calhoun to Magnum Motors where he purchased an automobile. While Calhoun was completing paperwork, Hayden stepped out of the office to smoke a cigarette and noticed defendant standing on a nearby corner. Hayden and Calhoun later left the office together to transfer Calhoun's belongings from his old car to his new one. While Calhoun was walking between two SUVs, Hayden heard shots being fired and saw Calhoun fall to the ground. Hayden saw defendant fire one shot at Calhoun's head and an additional three or four shots at his body.

¶ 5 During a police interview that day, Hayden identified defendant as the shooter by his nickname, Bushwick. She subsequently identified defendant in a photo array, a lineup, and in court. Hayden admitted she told a friend that she did not see the shooter's face because she thought that friend would discuss their conversation with other people.

¶ 6 Boykin Gradford was driving on Cicero Avenue when he heard gunshots. He noticed a short, stocky Black man wearing a black hoodie and a white "do-rag" standing behind an SUV on the car lot, with his arm outstretched and a gun in his hand. Gradford saw the victim standing between two parked cars, approximately three or four feet away from the shooter. He then saw the victim fall to the ground but he did not recall whether any more shots were fired. Gradford

viewed a lineup, thought defendant looked like the shooter, but he was not certain.

¶ 7 Vernon Holman admitted selling drugs often near Magnum Motors. He testified that he knew both the defendant and Hayden. On the day of the shooting, Holman was cutting through the car lot when he saw Hayden talking to a man who looked like Calhoun. At that time, Holman saw defendant, who was wearing a coat and a black hoodie, standing between two vans in the car lot. Holman then heard three or four shots, at which point he ran home.

¶ 8 Detective Michael Barz interviewed defendant after his arrest. Defendant admitted he was at the scene of the shooting but denied seeing who fired the shots. Defendant told the detective he recognized Calhoun as the man who killed his friend Anderson Thomas, also known as "Shug." Defendant had a tattoo on his arm that read "RIP Shug." A certified copy of Calhoun's 1993 murder conviction was entered into evidence.

¶ 9 The jury found defendant guilty of first degree murder, and the court sentenced him to 65 years in prison. Defendant's conviction and sentence were affirmed on direct appeal. *Perry*, No. 1-07-2761.

¶ 10 Defendant filed his initial *pro se* postconviction petition in July 2010, alleging several claims of ineffective assistance of trial counsel. The trial court summarily dismissed defendant's petition, which this court affirmed on appeal. *People v. Perry*, 2012 IL App (1st) 103225-U.

¶ 11 In April 2013, defendant filed his *pro se* successive postconviction petition asserting a claim of actual innocence. In support, defendant attached an affidavit purportedly from Hayden, dated July 11, 2012. She stated that she did not see who shot Calhoun because she was "not in a position to see who killed" him. She gave a statement identifying defendant as the shooter "after pressure" from the police and the assistant State's Attorney (ASA). She was given defendant's name from the detectives. Prior to defendant's trial, Hayden went over her testimony with an

ASA, and he "provided" her with the details of her testimony, including that she was not forced to identify defendant.

¶ 12 Continuing on, the affidavit provided that Hayden did not see defendant shoot Calhoun, nor did she see who killed Calhoun. She "falsely testified and identified" defendant at trial because she "had already lied" in her statement and she "feared prosecution." Hayden stated that she was not forced or induced to give the affidavit, which was signed and notarized with a photocopy of Hayden's state identification card.

¶ 13 The trial court docketed defendant's successive petition and appointed the public defender to represent defendant. The case proceeded to a third stage postconviction review with the agreement of the State. Prior to an evidentiary hearing, defendant's postconviction counsel sought to withdraw Hayden's affidavit following an investigation. Counsel stated that based on her own investigation, as well as the State's investigation, she could not "proceed with the affidavit." Counsel also asked to incorporate an affidavit from defendant. Defendant's affidavit simply stated his date of birth, current address in the penitentiary, and that he was "innocent of all charges and [he] still maintain[ed his] innocence."

¶ 14 The State orally moved to dismiss defendant's petition. Postconviction counsel waived "any sort of notice" and stated that she had "no argument." At a subsequent status hearing, that attorney indicated that defendant "does not agree" with her, but "as an officer of the Court, I stand by my decision." The trial court dismissed defendant's postconviction petition finding the petition with defendant's "self-serving affidavit" was "frivolous and completely without merit."

¶ 15 On appeal, this court found that postconviction counsel provided unreasonable assistance by withdrawing Hayden's 2012 affidavit over defendant's objection. *People v. Perry*, 2017 IL App (1st) 150587, ¶ 39. Counsel's "actions amounted to an affirmative action that damaged

defendant's claims" and defendant's actual innocence claim "could not stand absent Hayden's affidavit." *Id*. After acknowledging that "the record establishes serious questions regarding the reliability of the Hayden affidavit," we held that counsel should have either stood on the petition or sought to withdraw as counsel. *Id*. We remanded for new second stage proceedings on defendant's original petition with new counsel to be appointed. *Id*.

¶ 16 Defendant retained private counsel on remand. His new postconviction counsel filed an amended petition again raising a claim of actual innocence and reattached Hayden's 2012 affidavit. However, in January 2021, a new attorney filed his appearance, filed a certificate in compliance with Supreme Court Rule 651(c), and stated that defendant's *pro se* petition adequately presented defendant's contentions. (Ill. S. Ct. R. 651(c) (eff. July 1, 2017)). See *People v. Urzua*, 2023 IL 127789, ¶ 54 (Rule 651(c) sets forth the duties postconviction counsel must undertake at the second stage of proceedings).

¶ 17 Counsel also filed a new affidavit from Hayden, dated September 15, 2022, stating her trial testimony that she saw defendant shoot Calhoun "was not true." She said her identification of defendant "was mistaken" and she thought defendant shot Calhoun "but it was not him" and she "made a mistake." Hayden also stated that she did not "ever remember signing an affidavit" for defendant before. Her identity was stolen in 2014, including her driver's license and social security card. Counsel included a black and white photocopy of Hayden's identification card.

¶ 18 The trial court conducted an evidentiary hearing in March 2024. Postconviction counsel presented Hayden's 2022 affidavit but did not call her as a witness. Counsel stated that he discussed "the potential" of Hayden's testimony with defendant and they agreed "to rest on her affidavit and not proceed with her live testimony." Counsel asked defendant if this was correct and defendant stated it was. Counsel also submitted this court's 2017 decision in this case as an

exhibit because it explained the history of the case and a summary of the factual evidence. Counsel then rested.

¶ 19 The prosecutor presented a copy of Hayden's 2012 affidavit as his first exhibit. He then submitted Hayden's handwritten statement from the original investigation, signed by Hayden, Detective Barz, and the ASA. The prosecutor also presented a stipulation as the foundation for his next exhibit. The parties stipulated that if called to testify Kathleen DeWald would testify she is an ASA and was an ASA on June 24, 2014. On that date, she met with Hayden in an interview room at 26th and California in Chicago. DeWald would identify the next exhibit as a video recording of that conversation.

¶ 20 The prosecutor then presented the video recording, which was played for the court. In the video, DeWald questioned Hayden about this case. Hayden confirmed she testified at defendant's trial and that she saw defendant shoot and kill Calhoun. Hayden stated that her trial testimony was the truth. DeWald presented the 2012 affidavit to Hayden. Hayden stated that she did not recognize this document and denied that the signature on the affidavit was her signature. She did not sign this affidavit in 2012 and had not seen this affidavit until she spoke with DeWald. Hayden denied ever signing an affidavit for defendant. Hayden stated that her identification card was stolen from her in 2012. Hayden also said the statement in the affidavit that she identified defendant after being pressured by police and the ASA was not true. She further denied that the ASA told her what her trial testimony would be. Hayden continued to deny each statement made in the 2012 affidavit, including that she testified falsely because she feared prosecution.

¶ 21 DeWald also had Hayden identify her 2005 handwritten statement. Hayden confirmed it was her statement and that her signature was on each page of the document. Hayden said her

statement that she saw defendant shoot and kill Calhoun was the truth. Hayden stated that prior to being approached by DeWald, no one had approached her to provide an affidavit or say that defendant was not the shooter. Hayden confirmed that DeWald did not threaten or promise her anything to give the videotape statement. Hayden said she gave the statement of her own free will and everything she said was the truth.

¶ 22 Postconviction counsel then argued that "to some extent other than Ms. Hayden's statements regarding the actual incident itself, the tape and the previous affidavit are a red herring." He stated that he "made sure" Hayden provided her identification for the 2022 affidavit. When asked by the court if counsel was sure it was the same woman from the videotaped interview, counsel responded in the affirmative. The court said, "There's something seriously wrong with this case. Seriously wrong. But go ahead." Counsel maintained that he was "convinced" it was Hayden because he met with her when the affidavit was given and he knew she was the same person.

¶ 23 After counsel concluded his argument, the court voiced that it had "serious concerns." Counsel responded that he talked to Hayden about the facts of the case and she provided an affidavit with her identification so he "was certain of who she was." The court stated, "Well, obviously, you're the attorney, you're not a witness, at least you're not a witness right now. I have no reason whatsoever to ever doubt your credibility."

¶ 24 The trial court subsequently denied defendant's petition both on the record and in a written order. After reviewing Hayden's various statements, the court found her 2022 affidavit was not credible because her "new statements do not provide meaningful explanations or specific details." The court further found Hayden's affidavits recanting "a coerced false identification and testimony are unequivocally incredible." Hayden's videotaped statement in June 2014 affirming

the truthfulness of her initial statements and testimony was "compelling and consistent." The court concluded that Hayden's statements were not likely to change the result of the trial and defendant "failed to present evidence of such a character as to undermine confidence in his conviction."

¶ 25 Defendant argues on appeal that his postconviction counsel provided unreasonable assistance during the third-stage proceedings by failing to: (1) properly authenticate Hayden's 2022 affidavit, (2) present a cogent and supported claim based on Hayden's recantation, and (3) develop a due process claim that Hayden's identification of defendant was coerced by police. The State responds that postconviction counsel provided reasonable assistance in presenting defendant's actual innocence claim.

¶ 26 The Post-Conviction Hearing Act (Act) allows a defendant to challenge a conviction based on a violation of their rights under the United States Constitution or the Illinois Constitution or both. 725 ILCS 5/122-1(a) (West 2022); *People v. Coleman*, 183 Ill. 2d 366, 378-79 (1998). Defendant has not challenged the denial of his postconviction petition on the merits and, thus, he has forfeited any argument regarding his claim of actual innocence. *People v. Cotto*, 2016 IL 119006, ¶ 49; Ill. S. Ct. R. 341(h)(7) (eff. Oct. 1, 2020) ("Points not argued are forfeited and shall not be raised in the reply brief, in oral argument, or on petition for rehearing").

¶ 27 Defendant focuses his argument on his attorney's performance during the third-stage proceedings. The right to counsel in proceedings under the Act is not a constitutional right, but strictly a matter of legislative grace derived from the Act. *People v. Huff*, 2024 IL 128492, ¶ 21 (citing *People v. Custer*, 2019 IL 123339, ¶ 30). A postconviction defendant is entitled to only a reasonable level of assistance, which is a standard lower than that provided by the federal or state constitutions. *People v. Pendleton*, 223 Ill. 2d 458, 472 (2006).

¶ 28 The reasonable level of assistance required under the Act is not coextensive with the level of assistance required under *Strickland v. Washington*, 466 U.S. 668, 687 (1984). *People v. Hotwagner*, 2015 IL App (5th) 130525, ¶ 37 (citing *People v. Owens*, 139 Ill. 2d 351, 364-65 (1990)). Under *Strickland*, a defendant must demonstrate that counsel's performance was deficient and that such deficient performance substantially prejudiced defendant. *Strickland*, 466 U.S. at 687. To demonstrate performance deficiency, a defendant must establish that counsel's performance fell below an objective standard of reasonableness. *People v. Edwards*, 195 Ill. 2d 142, 163 (2001). In evaluating sufficient prejudice, "[t]he defendant must show that there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different. A reasonable probability is a probability sufficient to undermine confidence in the outcome." *Strickland*, 466 U.S. at 694.

¶ 29 Although *Strickland* "is not the relevant standard" for addressing such claims, "the *Strickland* test is an essential standard for comparison." *Hotwagner*, 2015 IL App (5th) 130525, ¶ 37; see *People v. Pabello*, 2019 IL App (2d) 170867, ¶ 36 (following *Hotwagner)*. "It stands to reason that, if postconviction counsel's assistance cannot be deemed ineffective under *Strickland*, it cannot be deemed unreasonable under the Act." *Pabello*, 2019 IL App (2d) 170867, ¶ 36 (citing *Hotwagner*, 2015 IL App (5th) 130525, ¶ 37); see *People v. Addison*, 2023 IL 127119, ¶ 38 ("this court has not prescribed by rule specific duties that counsel must perform at the third stage").

¶ 30 Because defendant's postconviction relief was denied following a third stage evidentiary hearing, we review postconviction counsel's representation under this general reasonable assistance standard. See *Hotwagner*, 2015 IL App (5th) 130525, ¶ 37. Even if we were to evaluate defendant's claims alleged against postconviction counsel under the elevated *Strickland*

standard, his claim that he was denied the right to reasonable assistance still fails for the reasons that follow.

¶ 31 Defendant first contends that his postconviction counsel was unreasonable for failing to present independent evidence to authenticate either of Hayden's affidavits. According to defendant, counsel could have either provided a clear color copy of Hayden's identification card or subpoena the notary to testify that Hayden's identification matched the person signing the affidavit. Instead, he argues that counsel violated Rule 3.7 of the Illinois Rules of Professional Conduct by acting as a witness to affirm Hayden was the person who signed the affidavit. Ill. R. Prof'l Conduct R. 3.7 (eff. Jan. 1, 2010) ("A lawyer shall not act as advocate at a trial in which the lawyer is likely to be a necessary witness").

¶ 32 The State responds that counsel sufficiently established the authenticity of the notarized 2022 affidavit and further proof was unnecessary because the State did not challenge its authenticity. The State also maintains that counsel did not violate the advocate-witness rule by answering the court's questions about the 2022 affidavit.

¶ 33 We agree with the State. Postconviction counsel did not act as a witness by responding to the trial court's questions. The following colloquy took place during counsel's argument.

> "THE COURT: Are you sure that's the same woman as I see on the videotape?
>
> POSTCONVICTION COUNSEL: Yes.
>
> THE COURT: There's something seriously wrong with this case. Seriously wrong. But go ahead.
>
> POSTCONVICTION COUNSEL: I'm convinced based on the date of birth and on the -- because I met with the lady when the affidavit was taken, so I

> know that that is the same person. Though this isn't evidence, it's my lawyer talk, that that person is the same person I met with in my office who provided me that identification, otherwise, I wouldn't be here if I had any doubt in my mind."

¶ 34 The court discussed the circumstances of Hayden's testimony, noting she testified both before the grand jury and then at trial. Hayden later provided the 2014 videotaped statement identifying defendant as the shooter and disavowing the 2012 affidavit. The court expressed that it had "serious concerns" about this case, including "the travesty of having fabricated recants to overturn convictions here." Counsel then stated he talked to Hayden about the facts of the case and provided the affidavit with identification so counsel "was certain of who she was." The court noted that counsel was the attorney and "not a witness," and it had "no reason whatsoever to ever doubt [his] credibility." We conclude postconviction counsel was not acting as a witness when he answered the court's questions about the 2022 affidavit and Hayden's identity. Further, we find counsel did not violate the advocate-witness rule and he did not act unreasonably.

¶ 35 Even if counsel was unreasonable for failing to authenticate the affidavit, which we do not find, defendant cannot establish any prejudice from counsel's actions. Contrary to defendant's assertion, the postconviction court did not rule that the 2022 affidavit was "a fraud on the court." Significantly, the court accepted the authenticity of Hayden's 2022 affidavit but rejected her recantation on the merits. The court found Hayden's affidavits to be "unequivocally incredible" while Hayden's 2014 videotaped statement was "compelling and consistent." The court observed that the videotaped statement "exposes the fraud submitted to this court" because Hayden denied being involved in the preparation of an affidavit. While the court did not specify which affidavit it was referring to, it can be logically inferred that the court meant the 2012 affidavit because the videotaped statement predated the 2022 affidavit by several years.

¶ 36 Additionally, the court did not find the 2022 affidavit lacked authenticity. When discussing the 2022 affidavit, the court found that Hayden provided "no explanation for why her identification was mistaken or any specific details to undermine the verdict." The court concluded that Hayden's statements were "not likely to change the result of the trial." Since the trial court accepted the authenticity of the 2022 affidavit and rejected the claim on the merits, defendant was not prejudiced by counsel's actions regarding authentication.

¶ 37 Defendant next asserts that postconviction counsel failed to make any good faith arguments to support Hayden's 2022 affidavit. According to defendant, it was unreasonable for counsel to stand on the 2022 affidavit recanting her identification. Defendant contends that counsel should have attempted to distinguish case law regarding recantations. While defendant asserts that "there are good-faith arguments to distinguish [his] case and modify or reverse existing law," defendant does not explain what arguments counsel could have made. Conclusory allegations are not sufficient to sustain a claim of ineffective, or unreasonable, assistance under the Act. *People v. Delton*, 227 Ill. 2d 247, 258 (2008).

¶ 38 It is unclear what counsel could have done under these circumstances. At the time postconviction counsel first appeared in 2021, this court had already remanded for further proceedings, and a prior counsel filed an amended petition reasserting actual innocence based on Hayden's 2012 affidavit. However, that affidavit had been disavowed by Hayden's 2014 videotaped statement. Postconviction counsel was placed in an untenable position: either stand on the disavowed 2012 affidavit or seek new evidence. Counsel chose the latter and stood on defendant's *pro se* petition supplemented by Hayden's 2022 affidavit.

¶ 39 Nevertheless, defendant contends that counsel made defendant's petition worse by supplementing it with the 2022 affidavit and arguing against the validity of the 2012 affidavit.

Defendant cites *People v. Addison*, 2023 IL 127119, ¶¶ 24-25, as support. There, the defendant raised multiple claims of ineffective assistance of trial and appellate counsel in his *pro se* petition. Postconviction counsel amended the petition, focusing on some of the defendant's claims but failed to shape these claims into their proper form. *Id.* ¶ 26. Crucially, counsel eliminated the necessary allegations of ineffective assistance of appellate counsel, leaving the claims subject to forfeiture. *Id.* ¶¶ 23-26.

¶ 40 *Addison* is readily distinguishable from the circumstances of this case. As thoroughly discussed above, Hayden's 2012 affidavit was repeatedly disavowed by Hayden. In the 2014 videotaped statement, Hayden denied having seen the affidavit before and denied her signature was on the document. She also reaffirmed her identification of defendant as the shooter and stated that her trial testimony was truthful. Hayden also denied providing the 2012 affidavit in the 2022 affidavit. It is unclear how counsel could have argued that the 2012 affidavit was valid. Unlike in *Addison*, counsel did not remove a necessary claim making the petition worse. Rather, counsel sought to remedy the significant problems of the 2012 affidavit by obtaining the 2022 affidavit. Counsel acted reasonably to minimize the effects of the dubious affidavit and proceed with a new one.

¶ 41 Defendant also cannot show how he was prejudiced by counsel's actions. During the evidentiary hearing, the trial court repeatedly expressed its concerns with the 2012 affidavit. In its written order, the court explicitly found the 2012 affidavit was fraudulent and the 2014 videotaped statement was "compelling and consistent." While defendant asserts that he was prejudiced by counsel's actions, he fails to offer any basis on which counsel could have supported the discredited 2012 affidavit. There was no reasonable probability that the trial court would have granted defendant's petition based on the 2012 affidavit.

¶ 42 Defendant next argues postconviction counsel was unreasonable for failing to develop his due process claim based on Hayden's 2012 affidavit that her identification of defendant was coerced by police and prosecutors. According to defendant, counsel should have presented evidence showing a pattern of misconduct by Detective Barz and that the State knowingly used false testimony in violation of *Napue v. Illinois*, 360 U.S. 264, 269 (1959) (holding that a defendant's right to due process is violated when a conviction is obtained through the use of false evidence "known to be such by representatives of the State").

¶ 43 The State responds that counsel has no obligation to raise this claim because it was not raised in defendant's *pro se* petition. In his reply, defendant asserts that the *Napue* claim arose from Hayden's allegations of coercion in the 2012 affidavit. He maintains it was counsel's role to support this claim at the evidentiary hearing.

¶ 44 Postconviction counsel is only required to investigate and properly present defendant's claims. *Pendleton*, 223 Ill. 2d at 472. "Postconviction counsel is not required to comb the record for issues not raised in the defendant's *pro se* post-conviction petition." *People v. Helton*, 321 Ill. App. 3d 420, 424-25 (2001). A postconviction petitioner is "not entitled to the advocacy of counsel for purposes of exploration, investigation and formulation of potential claims." *People v. Davis*, 156 Ill. 2d 149, 163 (1993).

¶ 45 Defendant's *pro se* petition set forth a single claim of actual innocence based on Hayden's 2012 affidavit. Significantly, a separate due process claim based on this affidavit was not alleged in the petition and counsel had no obligation to assert this new claim at the third stage.

¶ 46 Moreover, even if counsel was unreasonable for failing to present this claim, defendant cannot show prejudice. Defendant's argument relies again on the discredited 2012 affidavit.

These claims of coercion were denied by Hayden in the 2014 videotaped statement. Hayden specifically said the statement regarding coercion by Detective Barz and prosecutors was not true. She stated that both her handwritten statement and trial testimony were truthful. Notably, Hayden's 2022 affidavit does not allege any coercion, rather she stated that her identification was a mistake. Given this evidence, defendant has not shown a reasonable probability that the outcome would have been different.

¶ 47 We note that defendant is not without a remedy to pursue a potential due process claim. When appellate counsel discovers an error not argued during postconviction proceedings, the proper course of action is to seek leave to file a new successive petition alleging this claim. *People v. Jones*, 213 Ill. 2d 498, 509 (2004). Defendant can raise this claim in a new successive petition, but he will have to overcome the cause-and-prejudice test. See 725 ILCS 5/122-1(f) (West 2024).

¶ 48 For all of the reasons listed above, we affirm the judgment of the circuit court of Cook County.

¶ 49 Affirmed.