

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) 251396-U

NO. 4-25-1396

IN THE APPELLATE COURT

OF ILLINOIS

FOURTH DISTRICT

FILED

October 27, 2026

Carla Bender
4th District Appellate
Court, IL

THE PEOPLE OF THE STATE OF ILLINOIS,	)	Appeal from the
Plaintiff-Appellee,	)	Circuit Court of
v.	)	Logan County
GERALD L. THOMAS JR.,	)	No. 17CF202
Defendant-Appellant.	)	
	)	Honorable
	)	Emily J. Young,
	)	Judge Presiding.

JUSTICE DeARMOND delivered the judgment of the court.
Presiding Justice Steigmann and Justice Doherty concurred in the judgment.

ORDER

¶ 1 *Held:* The appellate court affirmed, concluding the testing requested by defendant failed to satisfy the requirements set forth in section 116-3(a) of the Code of Criminal Procedure of 1963 (725 ILCS 6/116-3(a) (West 2024)).

¶ 2 Defendant, Gerald L. Thomas Jr., appeals from the trial court's judgment denying his motion for postconviction testing under section 116-3 of the Code of Criminal Procedure of 1963 (Code) (725 ILCS 5/116-3(a) (West 2022)). For the reasons that follow, we affirm.

¶ 3 I. BACKGROUND

¶ 4 In December 2017, a grand jury charged defendant by indictment with two counts of attempt (first degree murder), a Class X felony (720 ILCS 5/8-4(a), 9-1(a)(1) (West 2016)) (counts I and II); aggravated battery, a Class X felony (720 ILCS 5/12-3.05(e)(1) (West 2016)) (count III); aggravated discharge of a firearm, a Class 1 felony (720 ILCS 5/24-1.2(a)(2) (West 2016)) (count IV); and unlawful possession of a weapon by a felon, a Class 3 felony (720 ILCS

5/24-1.1(a) (West 2016)) (count V). The charges alleged defendant used a firearm to shoot Manuel Pratt and Alonzo Rose on October 1, 2017. See *People v. Thomas*, 2026 IL App (4th) 250678-U, ¶ 5.

¶ 5 In December 2018, defendant waived his right to a jury trial, electing instead to have a bench trial, where 13 witnesses testified and several exhibits were presented. The trial court ultimately found defendant guilty of counts I, II, III, and V. The court imposed an aggregate sentence of 86 years' imprisonment. See *Thomas*, 2026 IL App (4th) 250678-U, ¶¶ 7, 22.

¶ 6 Since then, defendant has directly appealed and pursued collateral attacks on his conviction and sentence, all of which were unsuccessful. See, e.g., *People v. Thomas*, 2021 IL App (4th) 190099-U, ¶ 47 (upholding defendant's conviction and sentence); *People v. Thomas*, 2022 IL App (4th) 210746-U, ¶ 61 (affirming the dismissal of defendant's initial postconviction petition); *Thomas*, 2026 IL App (4th) 250678-U, ¶ 67 (affirming the denial of defendant's motion for leave to file a successive postconviction petition).

¶ 7 In May 2024, defendant filed a *pro se* motion for "Integrated Ballistic Identification System" (IBIS) testing under section 116-3 of the Code (725 ILCS 5/116-3 (West 2024)). According to defendant, "Ballistic evidence recovered *** ha[d] the scientific potential to produce new, non-cumulative evidence, and it [was] materially relevant to defendant's assertion of actual innocence." In support of that request, defendant asserted, in part, that "the ballistics recovered from Pratt *** would impeach Pratt's testimony that both shooters had 'identicle' [sic] semi-automatic handguns, and would rather support Rose [sic] testimony who identified [Shondale] Henson as one of the shooters; and who carried a revolver."

¶ 8 In June 2025, the State moved to dismiss defendant's motion for testing. Among

other reasons, the State asserted dismissal was warranted because defendant failed to (1) specify “what additional testing he want[ed] completed through IBIS” and (2) meet his burden under section 116-3(a) of the Code to show that such testing was not scientifically available at the time of trial. After conducting a hearing on defendant’s motion for testing, the trial court entered a written order denying defendant’s motion.

¶ 9 This appeal followed.

¶ 10 II. ANALYSIS

¶ 11 On appeal, defendant argues we should reverse the trial court’s judgment and remand for further proceedings. The State disagrees. Our review is *de novo*. *People v. Luczak*, 374 Ill. App. 3d 172, 176 (2007).

¶ 12 There is no constitutional right to postconviction forensic testing; rather, access to it is a matter of legislative grace. *People v. Grant*, 2022 IL 126824, ¶ 26 (citing *District Attorney’s Office for the Third Judicial District v. Osborne*, 557 U.S. 52, 72-74 (2009)). In that regard, the Illinois General Assembly enacted a statutory right to postconviction forensic testing, provided in section 116-3 of the Code. An action for postconviction forensic testing under section 116-3 is civil in nature and independent from any other type of postconviction action. *People v. Gawlak*, 2019 IL 123182, ¶ 32.

¶ 13 Section 116-3 of the Code states, in pertinent part, as follows:

“(a) A defendant may make a motion before the trial court that entered the judgment of conviction in his or her case for the performance of fingerprint, [IBIS], or forensic DNA testing, including comparison analysis of genetic marker groupings of the evidence collected by criminal justice agencies pursuant to the

alleged offense, to those of the defendant, to those of other forensic evidence, and to those maintained under subsection (f) of Section 5-4-3 of the Unified Code of Corrections, on evidence that was secured in relation to the trial *** which resulted in his or her conviction, and:

(1) was not subject to the testing which is now requested at the time of trial; or

(2) although previously subjected to testing, can be subjected to additional testing utilizing a method that was not scientifically available at the time of trial that provides a reasonable likelihood of more probative results.” 725 ILCS 5/116-3(a)(1)-(2) (West 2024).

¶ 14 Thus, for a defendant to be entitled to postconviction testing on evidence secured in relation to his or her trial under section 116-3, he or she must show, among other things, that the evidence to be tested (1) “was not subject to the testing which is now requested at the time of trial” or (2) “although previously subjected to testing, can be subjected to additional testing utilizing a method that was not scientifically available at the time of trial that provides a reasonable likelihood of more probative results” 725 ILCS 5/116-3(a)(1)-(2) (West 2024). “On this score, we note that subsection (a)(1) uses ‘subject’ but subsection (a)(2) uses ‘subjected.’ ‘Subject’ denotes what testing *could have been performed*; ‘subjected’ denotes what testing *actually was performed*.” (Emphases in original.) *People v. LaPointe*, 2018 IL App (2d) 160432, ¶ 34.

¶ 15 Here, it is undisputed the evidence defendant seeks to be tested was subjected to some testing. Despite that being so, defendant, contrary to the explicit requirements of section 116-3(a)(2), failed to identify any additional testing methods not scientifically available at the time of his trial that would provide a reasonable likelihood of more probative results. In fact, defendant concedes that “IBIS testing was available at the time of [his] trial.” See *People v. Pursley*, 407 Ill. App. 3d 526, 532 n.3 (2011) (IBIS became a useable database in 2000). Still, defendant argues, for the first time on appeal, that “additional tests could determine whether a revolver was involved.” Defendant acknowledges his failure to raise this issue below results in its forfeiture for purposes of appeal but asks this court to “overlook the forfeited argument for the sake of judicial economy.” We will not. But even if we did, defendant’s argument still fails because he makes no assertion that the additional computer-based and “skid mark” tests he now seeks were unavailable at the time of his trial. See 725 ILCS 5/116-3(a)(2) (West 2022). Accordingly, the testing requested by defendant fails to satisfy the statutory requirements set forth in section 116-3(a) of the Code. On this ground alone, the trial court’s judgment may be sustained.

¶ 16 III. CONCLUSION

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

¶ 18 Affirmed.