

2026 IL App (1st) 250283-U
No. 1-25-0283
Order filed September 30, 2026

Third Division

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 DISTRICT

THE PEOPLE OF THE STATE OF ILLINOIS,	)	Appeal from the
	)	Circuit Court of
Plaintiff-Appellee,	)	Cook County.
	)	
v.	)	No. 03 CR 274
	)	
JULIUS TRIPLETT,	)	Honorable
	)	Diana L. Kenworthy,
Defendant-Appellant.	)	Judge, presiding.

JUSTICE LAMPKIN delivered the judgment of the court.
Presiding Justice Quish and Justice Martin concurred in the judgment.

ORDER

- ¶ 1 *Held:* Defendant's petition for postconviction relief alleging ineffective assistance of trial counsel and actual innocence was denied following a third-stage evidentiary hearing. Defendant did not receive unreasonable assistance from postconviction counsel. Affirmed.
- ¶ 2 Defendant Julius Triplett sought postconviction relief pursuant to the Post-Conviction Hearing Act (Act), 725 ILCS 5/122-1 *et seq.* (West 2006), alleging that he did not receive the constitutionally guaranteed effective assistance of counsel at trial and that newly discovered

evidence demonstrated his innocence. Specifically, he claimed that trial counsel failed to investigate and present an alibi witness who would have shown he was not involved in the shooting that precipitated his conviction for first degree murder, and that newly discovered evidence demonstrated that one of the men who claimed to have witnessed the murder was not actually present. That petition was advanced to a third-stage evidentiary hearing after which the trial court denied defendant's petition. Defendant now appeals, arguing that he did not receive the reasonable assistance of counsel guaranteed by the Act.

¶ 3 For the reasons that follow, we affirm the judgment of the trial court.¹

¶ 4 I. BACKGROUND

¶ 5 A. Trial and Direct Appeal

¶ 6 Defendant was convicted of the first degree murder of Michael Haywood in 2004 following a bench trial. Haywood's body was discovered in a vacant lot at the corner of West Lexington Street and South Washtenaw Avenue in Chicago, Illinois.

¶ 7 Alicia Andrews and Victoria Washington lived in an apartment building two lots west of the vacant lot. Both women testified that they heard multiple gunshots outside their apartment on November 4, 2002, between 8:30 and 9 p.m. After the shooting, Andrews and Washington and other family members went outside. Washington testified that they did so immediately, but Andrews testified that they waited 30 minutes. Neither of them saw anything unusual, but it was dark and not all the streetlights in the area were working.

¹In adherence with the requirements of Illinois Supreme Court Rule 352(a) (eff. July 1, 2018), this appeal has been resolved without oral argument upon the entry of a separate written order.

¶ 8 Around 11:30 p.m., Haywood's friend, Jerome Cooper, informed Haywood's mother, Edna Gandia, that there was a shooting and he asked if Haywood made it home. He and Gandia searched for Haywood for two hours but could not find him. Around 9 a.m. the following morning, Washington and her brother left for school and saw Haywood's body in the vacant lot and called the police.

¶ 9 Two weeks after the shooting, Jermaine² Johnson and Keith Wilson were questioned by a detective and assistant State's attorney (ASA) and gave signed statements. Johnson stated he got into a car with Wilson and defendant on November 4, 2002, around 8 or 8:30 p.m. The trio drove around and made multiple stops before Johnson stopped at Lexington and Washtenaw at defendant's direction. Defendant exited the vehicle, stating he needed to talk to someone named "Big Baby."

¶ 10 Defendant pulled the hood of his sweatshirt over his head, and Johnson saw Haywood knocking on someone's front door. Johnson heard a gunshot followed by several more, at which point defendant returned to the vehicle and Johnson could see the grip of a gun sticking out of the front pocket of defendant's sweatshirt. The trio drove away. Johnson and Wilson later got out of the vehicle and defendant drove off on his own. Two weeks later, Johnson spoke to defendant on the phone. Defendant told Johnson that Wilson was "bogus for tricking on him," and Johnson told defendant that he was "bogus for shooting" Haywood.

¶ 11 Wilson's statement similarly covered the trio driving around together, but he stated that when Johnson drove to Lexington and Washtenaw, Haywood was standing on a porch. When

²Johnson's first name is spelled multiple different ways throughout the record. We have opted for the spelling used at defendant's trial.

Haywood saw defendant, he jumped to the porch next door and began climbing the fence near the vacant lot. Defendant pulled a gun from the pocket of his sweatshirt and fired it and Haywood fell. Wilson ducked down inside the car and heard several more gunshots. Defendant returned to the car and the trio drove away. Wilson and Johnson later got out of the car and defendant drove off on his own. Several days later, Wilson saw defendant carrying the same gun used to shoot Haywood. Defendant told Wilson he had “f***ed up” and “shouldn’t have done dude like that.”

¶ 12 Shortly after making their written statements, Johnson and Wilson testified before a grand jury. Both testified similarly to their written statements with the exception that Wilson testified he saw Haywood shot on the porch rather than while climbing the fence.

¶ 13 However, at trial, Johnson and Wilson recanted their prior statements and testimony incriminating defendant. Johnson testified to a similar course of events as his statements with the exception that he did not hear gunshots until after defendant returned to the car and he did not see defendant with a gun. Two weeks later, Johnson spoke with defendant, but Johnson denied that defendant said anything about Haywood.

¶ 14 Johnson acknowledged meeting with the ASA and giving a signed statement, but he claimed to only recognize parts of it. He denied telling the ASA that he saw defendant with a gun or that he ever had a conversation with defendant where he told defendant he was “bogus” for shooting Haywood. Johnson further claimed he could not recall if he agreed to tell the grand jury the truth because he had been drinking the previous night. He could not recall testifying that defendant returned to the car after the gunshots stopped or that he saw defendant with a gun.

¶ 15 Wilson testified that he drove to Lexington and Washtenaw with defendant and Johnson, and that he spoke with an individual named “Pookie Slim” and defendant spoke with Big Baby.

No one exited the vehicle. He acknowledged giving a signed statement but denied telling the ASA that Haywood tried to climb the fence of the vacant lot or that defendant had a gun and used it to shoot Haywood. He also denied that defendant ever told him he had “f***ed up” or that he “shouldn’t have done dude like that.” Wilson acknowledged testifying to the grand jury but denied giving many of the answers attributed to him including statements about seeing Haywood shot by defendant.

¶ 16 The State perfected its impeachment of Johnson and Wilson with the testimony of the ASA, and the prior statements of Johnson and Wilson were admitted as substantive evidence. The trial court found defendant guilty of first degree murder and sentenced him to 40 years in prison. That conviction was affirmed on direct appeal. *People v. Triplett*, No. 1-04-1387, 927 N.E.2d 892 (2006) (Table) (unpublished order pursuant to Illinois Supreme Court Rule 23).

¶ 17 B. Postconviction Proceedings

¶ 18 On October 30, 2007, defendant filed a *pro se* petition for postconviction relief. That petition attached an affidavit from Robert Robinson, dated October 1, 2007, which claimed that Robinson was at Iowa St. and Trumbull Ave. in Chicago on November 4, 2002, from 4 p.m. to 11 p.m. Robinson stated that Johnson was present at the same location from 7:30 p.m. until Robinson left at 11 p.m. Robinson claimed he remembered that night because he won \$200 playing dice. The petition also contained a handwritten affidavit from Maisha Hall, defendant’s sister, dated August 17, 2006, which stated that she was home at 8 p.m. on November 4, 2002, and that defendant was home with her. She spoke with defendant for some time before defendant picked up the house phone and went into his bedroom. Defendant remained in the bedroom until 10 p.m.

¶ 19 The trial court docketed defendant's petition for second-stage proceedings and appointed counsel. Postconviction counsel filed an amended petition on February 21, 2017. That petition alleged that trial counsel failed to investigate and present the testimony of Hall. Her attached affidavit claimed that defendant was home with her on the night when Haywood was shot and that defendant told trial counsel that she could testify as to his whereabouts. However, trial counsel never contacted her. Defendant's own affidavit similarly claimed that he told trial counsel that Hall could provide an alibi for him, but trial counsel never contacted her.

¶ 20 The petition further alleged the existence of newly discovered evidence that defendant learned of while incarcerated which would have resulted in his acquittal. Defendant attached a new affidavit from Robinson, dated November 3, 2015, which stated that on November 4, 2002, he was playing dice with Johnson "on Iowa between Homan and Trumbull" between 7 p.m. and 10 p.m., and therefore Johnson could not have witnessed defendant shoot Haywood. Robinson further stated that he remembered the night clearly, not because he won \$200 as previously stated, but because his girlfriend called him at 10 p.m. to inform him that she was going into labor. Robinson also stated that he was interviewed by an investigator for the Office of the Cook County Public Defender (Public Defender) in September 2015.

¶ 21 The trial court dismissed defendant's petition at the second stage and we reversed. *People v. Triplett*, 2021 IL App (1st) 180546-U. Defendant's petition proceeded to an evidentiary hearing on October 10, 2024. Hall testified that she and defendant were living together on November 4, 2002. She saw defendant around 8 p.m. in the kitchen and they spoke briefly before defendant returned to his bedroom. Hall was a hairstylist and was in the kitchen cutting a client's hair. From the kitchen, she could see defendant's bedroom. She continued working on her client's hair for

two hours and defendant did not leave his bedroom. Defendant's attorney never contacted her prior to trial, however she was eventually contacted by an investigator working for the Public Defender in 2015. Hall spoke with defendant while he was in jail awaiting trial and told him that she was willing to testify at trial.

¶ 22 Defendant testified that on November 4, 2002, around 8 p.m., he was at home. He spoke with his sister at that time and then returned to his bedroom where he stayed for the next three hours. Defendant claimed he told his trial attorney to look into the alibi he gave to police, and that the police reports for his case contained reference to his alibi and his sister, Hall. Defendant additionally stated that he encountered Robinson, who he had known since they were children, in Menard Correctional Center about a month prior to the creation of Robinson's first affidavit, and the two of them discussed defendant's case. Robinson told defendant that he was playing dice with Johnson the night Haywood was killed and therefore Johnson could not have "been where the police said he was."

¶ 23 The State called defendant's trial counsel, Joseph Kennelly. The parties stipulated that Kennelly's file for defendant's case, created when he worked at the Public Defender, could not be located. He could not remember whether defendant ever informed him about Hall, but he denied that she ever contacted him. However, Kennelly testified that the existence of an alibi witness did not mean he would always present an alibi defense if it contradicted a better defense. Kennelly explained that Haywood's body was found ten feet from the sidewalk in the vacant lot, and nobody discovered it until the following morning despite multiple people going outside to investigate and Haywood's mother searching for him for two hours. Thus, Kennelly explained that his theory of the case was that the shooting took place later in the night, which was why no one, but Johnson

and Wilson identified defendant as the shooter. According to Hennelly, if he was aware of Hall's potential testimony, he would not have used it because it would have drawn further attention to the time period in which Johnson and Wilson claimed the shooting happened.

¶ 24 The trial court denied defendant's petition. Regarding defendant's actual innocence claim, the trial court noted that Robinson had not been called to testify, and Robinson was the only witness for defendant's actual innocence claim.

¶ 25 On February 4, 2025, defendant filed a notice of appeal.

¶ 26 II. ANALYSIS

¶ 27 On appeal, defendant does not challenge the trial court's factual findings or ultimate ruling denying his petition. Instead, he raises one argument—that postconviction counsel failed to provide reasonable assistance when he failed to call Robinson to testify at the third-stage evidentiary hearing.

¶ 28 The Act provides a mechanism by which a defendant may raise a collateral attack against his or her conviction based on a claim of actual innocence or where there was a substantial denial of his or her rights under the Constitution of the United States, the State of Illinois, or both. 725 ILCS 5/122-1 *et seq.* (West 2006). The purpose of postconviction proceedings is to allow inquiry into constitutional issues involved in the original conviction and sentence that have not been, and could not have been, adjudicated previously on appeal. *People v. Buffer*, 2019 IL 122327, ¶ 12.

¶ 29 The Act sets out a three-stage process for the adjudication of postconviction petitions. *Id.* ¶ 45. At the first stage, the trial court is only required to determine whether a petition is “frivolous or patently without merit.” 725 ILCS 5/122-2.1(a)(2); *Buffer*, 2019 IL 122327 at ¶ 45. A petition is frivolous or patently without merit when it has no arguable basis in law or in fact. *People v.*

Hodges, 234 Ill. 2d 1, 16 (2009). A petition which lacks an arguable basis either in law or in fact is one which is based on an indisputably meritless legal theory or a fanciful factual allegation. *Id.* An example of an indisputably meritless legal theory is one which is completely contradicted by the record. *Id.* Fanciful factual allegations include those which are fantastic or delusional. *Id.* at 17.

¶ 30 If a petition is not dismissed as frivolous or patently without merit, the petition advances to the second stage where counsel may be appointed to an indigent defendant and where the State is allowed to file a motion to dismiss or an answer to the petition. *Id.* at 10-11. At the second stage, all allegations not rebutted by the record are taken as true, and a defendant bears the burden of making a substantial showing of a constitutional violation. *People v. Pendleton*, 223 Ill. 2d 458, 473 (2006). If a defendant can make such a showing, the petition is advanced to the third stage, the stage pertinent to this case, where an evidentiary hearing is held and the trial court may engage in fact-finding and credibility determinations. *Id.* At that evidentiary hearing, the defendant bears the burden of proving his claims by a preponderance of the evidence. *People v. Coleman*, 2013 IL 113307, ¶ 92.

¶ 31 Although defendants in postconviction proceedings are entitled to the appointment of counsel at the second stage, that right flows from the Act, not the United States or Illinois Constitutions. *People v. Owens*, 139 Ill. 2d 351, 364 (1990). As a result, defendants in postconviction proceedings are entitled to only a reasonable level of assistance rather than the effective assistance guaranteed by the United States Constitution. *Id.* This distinction is rational because trial counsel plays a different role than counsel in postconviction proceedings. *Id.* At trial, counsel acts as a shield to protect defendants from being stripped of their presumption of

innocence. *Id.* Defendants in postconviction proceedings have already been stripped of their presumption of innocence and have generally failed to obtain relief on appellate review of their convictions. *Id.* at 365. Defendants are the ones who initiate postconviction proceedings and counsel is appointed to shape a defendant's complaints into the proper legal form and present those to the court. *Id.*

¶ 32 To that end, Illinois Supreme Court Rule 651(c) requires the record to affirmatively show that postconviction counsel has: (1) consulted with the defendant by phone, mail, electronic means, or in person to ascertain his contentions of deprivation of constitutional rights; (2) examined the record of the proceedings at trial; and (3) made any amendments to the defendant's *pro se* petition that are necessary for an adequate presentation of petitioner's claims. Ill. S. Ct. R. 651(c) (eff. July 1, 2017).

¶ 33 However, Rule 651(c) is not the only way we measure reasonable assistance. As our supreme court stated, "this court has never conditioned the reasonable level of assistance standard on the applicability of [Rule 651(c)]." *People v. Cotto*, 2016 IL 119006, ¶ 41. The reasonable assistance standard applies to all postconviction defendants without reference to Rule 651(c). *Id.* Rule 651(c) is merely a vehicle for ensuring a reasonable level of assistance and should not be viewed as the only guarantee of reasonable assistance in postconviction proceedings. *Id.* This level of assistance is less than that afforded by the federal or state constitutions. *Cotto*, 2016 IL 119006, ¶ 45.

¶ 34 Our supreme court has not prescribed the specific duties that postconviction counsel must perform at a third stage hearing. *People v. Addison*, 2023 IL 127119, ¶ 38. Thus, courts have turned to the *Strickland v. Washington* ineffective assistance standard as an essential point of comparison.

“It stands to reason that, if postconviction counsel’s assistance cannot be deemed ineffective under *Strickland*, it cannot be deemed unreasonable under the Act.” *People v. Pabello*, 2019 IL App (2d) 170867, ¶ 36 (citing *People v. Hotwagner*, 2015 IL App (5th) 130525, ¶ 37); see also *Strickland v. Washington*, 466 U.S. 668, 687-94 (1984).

¶ 35 Those standards in mind, we do not agree with defendant that postconviction counsel provided unreasonable assistance by failing to subpoena Robinson’s testimony. We can begin with what we do know. The parties stipulated that Robinson was incarcerated, serving a 40-year sentence for first degree murder. Robinson did not testify at defendant’s third-stage hearing and the record does not contain any filed subpoenas that were served upon Robinson or indicate any other attempts were made to have Robinson brought to court. Robinson’s first affidavit, dated October 1, 2007, was not notarized, and the State requested its admission into evidence. Robinson’s second affidavit was created on November 3, 2015, and postconviction counsel requested its admission into evidence. Defendant also testified that he had known Robinson since they were children. Finally, Robinson’s second affidavit maintained that he was interviewed by an investigator from the Public Defender’s Office in September 2015, nine years before the evidentiary hearing commenced.

¶ 36 We do not know the extent of postconviction counsel’s communications with Robinson or what the result of those communications were. There are any number of possible reasons why postconviction counsel might have decided not to call Robinson. The record provides us with no answers.

¶ 37 Even if we were to use the *Strickland* standard as a starting point, we cannot speculate in favor of defendant and assume that Robinson’s absence at the hearing was due to an error on

postconviction counsel's part rather than an intentional tactical decision or that the lack of Robinson's testimony prejudiced defendant. This factual circumstance is similar to *People v. Coons*, 2024 IL App (4th) 230552. There, the defendant raised a similar claim that postconviction counsel failed to secure testimony that would have supported one of his claims. *Id.* ¶ 44. The court recognized that the record did not establish why counsel failed to present such testimony, and that counsel may have been unable to locate the witness or that investigation informed counsel that the testimony would not have been helpful. *Id.* ¶ 45. Thus, the court could not conclude that the defendant received unreasonable assistance. *Id.* We are similarly unable to conclude that Robinson's absence demonstrates the unreasonable assistance of postconviction counsel, given Robinson's conflicting affidavits, first degree murder conviction, and lifelong relationship with defendant.

¶ 38 Defendant further argues that the trial court's written order stated that it denied defendant's actual innocence claim "because counsel failed to call Robinson as a witness" and that the trial court "chastised counsel's mistake and explained how it precluded relief." We quote in its entirety the trial court's analysis as to why it found defendant's new evidence to be insufficiently conclusive to warrant a new trial:

"The actual innocence evidence stemming from the affidavit of Robert Robinson is not conclusive because this court finds the information devoid of credibility. Two purported affidavits from Mr. Robinson were presented during the third stage hearing. In his 2007 affidavit, Mr. Robinson claims that he remembers the November 4, 2002 dice game because he won \$200 that day. In his 2015 affidavit, Mr. Robinson claims he remembers the dice game because his girlfriend went into labor that evening. These two

accounts are entirely different. In addition, the 2007 and 2015 [affidavits] contain different times for which Mr. Robinson claims to be present playing dice. The 2007 affidavit also contains details not listed in the 2015 affidavit. Furthermore, the circumstances under which the initial affidavit was drafted is suspect. Most importantly, despite the petitioner knowing the location of Robert Robinson, he failed to call him as a witness for his third stage hearing, nor did he provide any reason why the witness could not be called. As such, there was no opportunity to question Mr. Robinson regarding the creation of his affidavits or the reasons as to why the information in them varied so greatly.

In addition, the court had no opportunity to examine the demeanor of the witness on the stand and judge his credibility. The petitioner cannot circumvent the fact-finding role of the court by failing to call their only witness regarding Mr. Triplett's actual innocence claim and instead hope to avoid scrutiny by resting their case on a mere piece of paper. One cannot cross examine a piece of paper."

¶ 39 The trial court's reasoning was not that it denied defendant's claim because he failed to call a live witness as though it were some sort of procedural defect. Instead, it reasoned that two affidavits, which were inconsistent, were not sufficient to meet defendant's burden of proof and warrant a new trial. Certainly, the trial court viewed the absence of a live witness that could be cross-examined and reconciled the two affidavits as a detriment to defendant's claim. But as discussed above, there is no guarantee that Robinson's live testimony would have been helpful or that his live testimony could have credibly resolved the inconsistencies identified by the trial court.

¶ 40 Defendant insists that this case is analogous to *People v. Butcher*, but we find *Butcher* distinguishable. In *Butcher*, the defendant was convicted of armed robbery. *People v. Butcher*, 240

Ill. App. 3d 507, 508 (1992). The two victims were beaten into unconsciousness by two men and could not identify their assailants. *Id.* One witness testified that the defendant was not one of the perpetrators. *Id.* at 510. On appeal, the defendant argued that he received ineffective assistance of counsel because trial counsel failed to subpoena two additional witnesses who could corroborate testimony of the eyewitness who claimed the defendant was not the perpetrator. *Id.* This court agreed and granted the defendant a new trial. *Id.*

¶ 41 As we previously noted, the reasonable assistance of counsel standard and ineffective assistance of counsel standards are not co-extensive; reasonable assistance does not impose the same demands on counsel. *Cotto*, 2016 IL 119006, ¶ 45. Thus, what constitutes ineffective assistance is not necessarily unreasonable assistance. In *Butcher*, the court noted that trial counsel inexplicably elicited prejudicial and inadmissible testimony from the defendant that he had been arrested for murder in the past. *Butcher*, 240 Ill. App. 3d at 510. Furthermore, the analysis in *Butcher* is scant and makes no reference to what information in the record informed the court that two other witnesses could definitively corroborate the testimony that the defendant was not one of the perpetrators. Instead, the court treated that fact as a foregone conclusion with no explanation. *Id.*

¶ 42 We cannot say the same here. Even if we assume that Robinson would have testified consistently with his affidavits, his two affidavits offered contradictory timelines and reasons why he remembered the night in question. And as we have already discussed, there are numerous potential reasons why postconviction counsel might have opted not to present Robinson's testimony, and nothing in the record provides us with the necessary information to determine that this decision was an unreasonable one.

¶ 43 Even using the *Strickland* standard as a starting point, we do not agree that postconviction counsel's decision not to call Robinson was an error or that it prejudiced the outcome of defendant's hearing. We find that postconviction counsel did not provide unreasonable assistance.

¶ 44 III. CONCLUSION

¶ 45 For the foregoing reasons, we affirm the judgment of the trial court.

¶ 46 Affirmed.