2026 IL App (4th) 250213

NO. 4-25-0213

FILED
November 23, 2026
Carla Bender
4th District Appellate
Court, IL

IN THE APPELLATE COURT

OF ILLINOIS

FOURTH DISTRICT

THE PEOPLE OF THE STATE OF ILLINOIS, Plaintiff-Appellee, v. ALEXANDER V. BEARD, Defendant-Appellant.	))))))))	Appeal from the Circuit Court of McLean County No. 13CF1263 Honorable William A. Yoder, Judge Presiding.

PRESIDING JUSTICE STEIGMANN delivered the judgment of the court, with opinion.
Justices DeArmond and Harris concurred in the judgment and opinion.

OPINION

¶ 1 This is the fifth appeal from defendant, Alexander V. Beard, involving his December 2013 convictions for three counts of aggravated criminal sexual abuse (720 ILCS 5/11-1.60(c)(1)(i) (West 2012)) and one count of predatory criminal sexual assault of a child (*id.* § 11-1.40(a)(1)), for which the trial court sentenced him to a total of 18 years in prison. This court affirmed those convictions on direct appeal. *People v. Beard*, 2016 IL App (4th) 140286-U, ¶ 64 (*Beard I*).

¶ 2 In November 2017, defendant *pro se* filed a petition under the Post-Conviction Hearing Act (Act) (725 ILCS 5/122-1 *et seq.* (West 2016)), which the trial court dismissed, and this court affirmed the dismissal after defendant's appellate counsel moved to withdraw on the grounds that the case lacked any arguable merit. *People v. Beard*, 2020 IL App (4th) 180120-U,

¶ 3 (*Beard II*).

¶ 3 Subsequently, in 2020 and 2021, defendant filed his first and second motions for leave to file successive postconviction petitions, raising claims of trial errors and actual innocence. The trial court denied leave to file those successive petitions, and this court affirmed those denials. *People v. Beard*, No. 4-21-0058 (2022) (unpublished summary order under Illinois Supreme Court Rule 23(c)) (*Beard III*); *People v. Beard*, 2023 IL App (4th) 220331-U, ¶¶ 4-5 (*Beard IV*).

¶ 4 In July 2023, defendant filed his third motion for leave to file a successive postconviction petition, in which he claimed that his appellate counsel for *Beard IV* rendered ineffective assistance by abandoning his two remaining actual innocence claims that were meritorious. In September 2024, the trial court denied defendant's third motion for leave, finding that (1) the claims were not supported by newly discovered evidence, (2) defendant failed to make any showing that appellate counsel was ineffective, and (3) any remaining claims had been previously litigated and were barred by *res judicata*.

¶ 5 Defendant appeals, arguing that the trial court erred by denying his third motion for leave to file a successive postconviction petition because he demonstrated that his appellate counsel in *Beard IV* was ineffective for failing to address all of defendant's newly discovered evidence on appeal when that evidence made a *prima facie* showing of actual innocence.

¶ 6 We disagree and affirm.

¶ 7 I. BACKGROUND

¶ 8 A. The Initial Trial Court Proceedings

¶ 9 1. *The Charges*

¶ 10 In October 2013, a grand jury indicted defendant, age 33, on four counts of aggravated criminal sexual abuse (720 ILCS 5/11-1.60(c)(1)(i) (West 2012)) and one count of

predatory criminal sexual assault (*id.* § 11-1.40(a)(1)). The charges stemmed from allegations made by S.W., a minor under the age of 13, regarding four separate acts of abuse occurring on three separate occasions between April and July 2013. Before trial, the State dismissed one of the counts of criminal sexual abuse.

¶ 11 2. *The Jury Trial*

¶ 12 In December 2013, the trial court conducted defendant's jury trial. This court has previously set forth in detail the testimony and evidence presented at defendant's trial. See *Beard I*, 2016 IL App (4th) 140286-U, ¶¶ 11-31. We recite only the information necessary for an understanding of the current claims on appeal.

¶ 13 S.W. testified that she was 11 years old at the time of the offenses. S.W. stated that defendant lived with S.W.'s neighbor, Candace, along with Candace's son (Estaban), defendant's girlfriend (Amanda Harris), and Amanda's two children (Dontae and Damien Harris). S.W. would often go over to Candace's apartment to play with the boys. S.W. described four different occasions during which defendant behaved inappropriately with her. She testified at trial that all four occasions occurred (1) about a month or two before the end of the school year and (2) when defendant was staying in her neighbor Candace's apartment next to the one S.W. and her family lived.

¶ 14 The first occasion S.W. described occurred at Candace's apartment, when S.W. was playing and "wrestling" with defendant and Estaban. When Estaban went to the bathroom, defendant climbed on top of S.W. and rubbed his penis, which she described as "hard and pointy," on her vagina while both were fully clothed.

¶ 15 The second also occurred at Candace's apartment, when S.W. was "lining" defendant's hair in a bathroom. S.W. asked defendant to leave so she could use the toilet. He left

but quickly returned. Defendant disrobed, took off S.W.'s pants and underwear, lay her on the floor, and rubbed his penis on the outside of her vagina.

¶ 16 S.W. testified about a third event that happened when defendant took her to O'Neil Park to play basketball. After playing for a while, defendant took S.W. to the dugout of a softball field and tried to get S.W. to touch his penis. S.W. testified that when she told him that it was inappropriate for her to touch a grown man there, defendant relented and took her back to the basketball court.

¶ 17 The fourth occasion occurred in the evening, when defendant came to S.W.'s apartment to return some DVDs to her mother. S.W. asked defendant to take her to Circle K to get soda and snacks. Defendant instead drove S.W. to behind a Family Dollar store and parked. There, S.W. testified she wanted to lie down and asked defendant to help her move a tire in the back that was preventing her seat from reclining. Defendant agreed, climbed into the back of the van with S.W., pulled down her pants, and touched her vagina with his hand over her underwear. S.W. then testified that defendant took his pants off, pulled down her underwear, and rubbed his penis on her vagina.

¶ 18 The State also presented the testimony of S.W.'s older sister, N.S., and the sister's boyfriend, Luke Peterson, who were the two people to whom S.W. first disclosed the abuse. S.W. was interviewed at the McLean County Children's Advocacy Center (CAC), and the recording of that interview was admitted into evidence and played for the jury. In her interview, S.W. discussed the same four occasions she testified about at trial, although in less detail and with some discrepancies in those details. For instance, in her interview, S.W. described the Circle K incident but never said defendant rubbed his penis on her vagina. Instead, she said defendant first rubbed her vagina over her clothes while she was sitting in the passenger seat.

¶ 19 Defendant called Candace and Amanda to testify at trial, who both stated that defendant moved into the apartment in February 2013 and moved out midway through April 2013. Defendant also testified in his own defense, stating that he never touched S.W. inappropriately, treated her like a daughter, and had "no idea why she would even make any type of accusations," although he believed others had coerced her into it. Defendant claimed that he was never alone with S.W. at Candace's apartment; however, he did remember the occasion when he took S.W. to Circle K, which he said took no more than 10 to 15 minutes and consisted of simply taking her to get soda and snacks like she asked. Defendant also testified that on the evening of April 28, 2013, S.W.'s mother told him S.W. was missing, the police were notified, and defendant was looking for her when he found her at Miller Park with Luke. Defendant spoke with the police at the park after S.W. was found.

¶ 20 The jury found defendant guilty of all three counts of aggravated criminal sexual abuse and one count of predatory criminal sexual assault.

¶ 21 3. *The Sentencing Hearing and* Krankel *Inquiry*

¶ 22 In January 2014, the trial court conducted defendant's sentencing hearing. Shortly before that hearing, defendant sent the court a letter, asserting claims of ineffective assistance of counsel. Specifically, he alleged that trial counsel "excluded" certain witnesses at trial and failed to impeach N.S. and Luke with eligible prior offenses. At the hearing, the court asked defendant about those claims and gave him the opportunity to expand upon and explain them. See *Beard IV*, 2023 IL App (4th) 220331-U, ¶¶ 23-26 (describing in detail the *People v. Krankel*, 102 Ill. 2d 181 (1984), proceedings in this case).

¶ 23 Defendant's primary complaint was that trial counsel did not call Amanda's two sons (Dontae and Damien), Estaban, and "a couple of police officers," whose names he did not

know. Defendant believed the children would have been able to give additional information regarding some of the instances of abuse and the police officers would have provided more information about the April 28, 2013, event when S.W. went missing and was found in Miller Park with Luke. Defendant also claimed trial counsel was ineffective for failing to ask defendant questions on the witness stand that would have helped him impeach S.W.'s testimony.

¶ 24 Trial counsel then addressed defendant's claims and informed the trial court that he investigated and considered all of the witnesses defendant mentioned but decided as a matter of trial strategy not to call them because (1) they were not occurrence witnesses, (2) their testimony would have been duplicative, and (3) their testimony concerned tangential topics. Counsel also explained that he did not impeach N.S. and Luke with their minor prior offenses because the crimes were not probative of their honesty. Moreover, counsel did not want to impeach Luke's testimony explaining how he got S.W. to admit to the abuse because it was favorable for the defense theory that S.W. was coerced into making the allegations.

¶ 25 The trial court agreed with trial counsel's reasoning and declined to appoint new counsel, concluding that all of defendant's claims of ineffective assistance concerned matters of trial strategy and counsel had made "sound tactical decisions."

¶ 26 The trial court then sentenced defendant to a total of 18 years in prison—6 years in prison for each aggravated criminal sexual abuse conviction, to be served concurrently to each other but consecutively to 12 years in prison for predatory criminal sexual assault.

¶ 27 B. The Direct Appeal

¶ 28 Defendant appealed his convictions and sentence, arguing that (1) the evidence was insufficient to convict him because S.W.'s testimony was " 'incredible,' " (2) the trial court erred by admitting S.W.'s unreliable hearsay statements accusing defendant of sexual abuse, and

(3) defendant's *Krankel* claims warranted appointing new counsel. *Beard I*, 2016 IL App (4th) 140286-U, ¶ 3. After thoroughly reviewing the record and detailing the evidence presented at trial, this court rejected all of defendant's claims and affirmed the trial court's judgment. *Id.* ¶ 64.

¶ 29 C. Defendant's Initial Postconviction Petition

¶ 30 In November 2017, defendant filed his petition for postconviction relief, alleging that the trial court erred by (1) admitting the hearsay statements made by S.W. and (2) failing to appoint new counsel at the *Krankel* hearing because his initial trial counsel failed to investigate and call certain witnesses, impeach State's witnesses, and establish an alibi defense. The trial court denied defendant's petition in February 2018, finding his claims were barred by *res judicata* because they had been raised on direct appeal.

¶ 31 Defendant appealed, and the Office of the State Appellate Defender (OSAD) was appointed to represent defendant on appeal. *Beard II*, 2020 IL App (4th) 180120-U, ¶ 23. OSAD filed a motion to withdraw, asserting that any appeal of the case was without arguable merit because defendant's claims had been litigated on direct appeal and were barred by *res judicata*. *Id.* This court agreed with OSAD's motion, granted OSAD leave to withdraw, and affirmed the trial court's judgment. *Id.* ¶ 34.

¶ 32 D. Defendant's First Motion for Leave To File a Successive Petition

¶ 33 In June 2020, defendant filed a motion for leave to file a successive postconviction petition raising several claims, including (1) fundamental fairness required relaxing the cause and prejudice test to allow defendant to plead and prove the two claims presented in his first postconviction petition, (2) the trial court erroneously instructed the jury as to the number of charges, and (3) fundamental fairness should apply because the State failed to disclose during discovery the criminal backgrounds of three witnesses—Luke, N.S., and S.W.'s mother.

¶ 34 In September 2020, the trial court entered a written order denying defendant leave to file his successive petition. The court concluded that defendant failed to satisfy the cause and prejudice test because "there was no objective factor that impeded his ability to raise these claims in his initial petition." The court also found that defendant failed to show prejudice because the record "[did] not show any claim that so infected the trial that [defendant's] due process rights were violated."

¶ 35 To the extent defendant asserted a claim of actual innocence, the trial court wrote that (1) the facts set forth by defendant in his motion for leave were "merely cumulative," (2) the evidence was known and presented at trial, and (3) the evidence was not of such a character that it probably would have changed the result on retrial. Accordingly, the court concluded that if defendant was claiming actual innocence, he failed to meet the applicable pleading standard.

¶ 36 In January 2021, defendant appealed, and OSAD was again appointed to represent him on appeal. In August 2021, OSAD filed a motion to withdraw as counsel on appeal, explaining that no meritorious issues were presented for review because (1) defendant's claims were previously raised and rejected, (2) defendant failed to make a showing of cause and prejudice, and (3) his actual innocence claims were not supported by newly discovered evidence.

¶ 37 In a summary order, this court granted OSAD's motion to withdraw and affirmed the trial court's denial of leave to file a successive postconviction petition, specifically noting that defendant's claims had either been previously raised on direct appeal or were based entirely upon the record and could have been raised on direct appeal or in his initial postconviction petition. *Beard III*, summary order at 6-7.

¶ 38 E. Defendant's Second Motion for Leave To File a Successive Petition

¶ 39 In November 2021, defendant filed his second motion for leave to file a successive

postconviction petition. In his second motion, defendant asserted (1) a claim of actual innocence, (2) that "fundamental fairness should relax [defendant's] claim of ineffective assistance of appellate counsel where both trial counsel and appellate counsel failed to raise issues which would have resulted in a different outcome and the law has changed regarding actual-innocence which allows [defendant] to re-raise issues that were rejected on direct appeal," and (3) that he was denied his right to a fair and impartial jury where the venire consisted of all White members.

¶ 40 Defendant's actual innocence claim was based on and supported by affidavits from Amanda's children (Dontae and Damien), a response to Freedom of Information Act (FOIA) (see 5 ILCS 140/1 *et seq.* (West 2020)) requests for police reports, and an e-mail from the director of the park district for O'Neil Park, which contained the softball fields and dugouts at issue. Defendant argued that had this evidence been presented at trial, he would have been found not guilty.

¶ 41 Dontae and Damien averred in their affidavits that (1) S.W. was never alone in the house with defendant, (2) S.W. had a reputation for lying, and (3) they were prepared to give statements at the trial, but trial counsel never spoke to them about those statements. They also stated that defendant moved out of their apartment on April 18, 2013, and Luke and S.W. had a romantic relationship that S.W. was hiding from her mother. Dontae stated that O'Neil Park had "a softball/baseball field that is only accessible when there are games being played. If there are no games being played, a lock is put on the fence where no one can get into the field or the dugouts."

¶ 42 The FOIA response, dated April 12, 2021, consisted of a police report from one of the two officers who was present on April 28, 2013, when S.W. was found in Miller Park with Luke. The officer detailed the information he received from S.W.'s mother when she was reported missing and a follow up noting that Officer Squires had found S.W. in Miller Park with two older

males. The officer met Squires at Miller Park, and they took S.W. home. The report states, "Refer to Officer Squires' supplemental report for further information regarding his contact with [redacted]."

¶ 43 Defendant also attached an affidavit from his father, Alfred Beard, stating that (1) in August 2021, he e-mailed Director of Bloomington Parks, Recreation and Cultural Arts Jay Tetzloff about access to the softball fields; (2) Tetzloff responded that the softball field "is always locked unless there is a game or [it is] being mowed"; and (3) Alfred had only learned of the allegations that defendant touched a girl inside a softball dugout "recently, this year." The e-mail chain was attached to Alfred's affidavit.

¶ 44 In his motion, defendant explained at length what evidence could have been presented and blamed his trial counsel for not calling the witnesses. In particular, defendant claimed that (1) the affidavits from Dontae and Damien and the FOIA response showed that S.W. was in a relationship with Luke and (2) defendant could not have raised the claims earlier because he and Amanda only recently learned of this information. Defendant also noted that he was convicted by an all-White jury and he brought this to his appellate counsel's attention on direct appeal. Defendant argued that because appellate counsel did not raise this claim, he should not be penalized for failing to raise it earlier.

¶ 45 In February 2022, the trial court denied defendant's motion, explaining as follows:

> "The Court finds that the affidavits and exhibits attached to [defendant's motion] are not newly discovered. These witnesses were known to [defendant] prior to trial. *** [Defendant] allegedly lived with these witnesses at the time the abuse and assaults allegedly occurred. ***

> The Court finds the evidence is cumulative. These witnesses' testimony will be that [defendant] could not have committed the abuse/assault because they did not see him alone with the victim. This was [defendant's] defense at trial. He testified. These witnesses would simply add to what he has already stated.
>
> *** The affidavits which state that [defendant] and [the] Victim were not alone does not place the trial evidence in a different light which undermines the Court's confidence in the judgment of guilt. The State's allegations allege that the acts took place between the 1st day of April, 2013 through the 1st day of July, 2013. [Defendant] even asserts that the Victim was around for a substantial period of time and was told to go home several times. [Defendant] even testified at trial about a trip to Circle K where he and the Victim were alone. *** The affidavits further assert that the [v]ictim was in a relationship with another person named Luke. Even if true, this does not undermine the Court's confidence in the judgment of guilt.
>
> *** [Defendant's] Motion is Denied."

¶ 46 Defendant appealed, and OSAD was appointed as counsel on appeal. In his brief, defendant argued only that the trial court erred by not granting him leave to file his actual innocence claim based on Dontae and Damien's affidavits because they constituted newly discovered evidence of such a conclusive character that it would probably change the result on retrial. Defendant did not discuss the other evidence he attached to his second motion for leave in support of his actual innocence claims, nor did he address the other previously raised claims or the biased jury.

¶ 47 In February 2023, this court issued its decision affirming the trial court's denial of defendant's second motion for leave to file a successive petition. *Beard IV*, 2023 IL App (4th)

220331-U, ¶ 52. We explained why the trial court correctly found that Dontae and Damien's affidavits were not newly discovered because the witnesses (1) were on defendant's witness list at his jury trial and (2) were addressed during the *Krankel* hearing, at which the court agreed with defense counsel's strategic decision not to call them to testify. *Id.* ¶¶ 48-49. Because we concluded that the witnesses' affidavits were not newly discovered, we did not address whether they were material and noncumulative. *Id.* ¶ 50.

¶ 48 F. Defendant's Third Motion for Leave To File a Successive Petition:

The Motion at Issue in This Case

¶ 49 In July 2023, defendant filed his third motion for leave to file a successive postconviction petition, which is at issue in this appeal. In that motion, defendant asserted that he filed his second motion for leave to file a successive postconviction petition "based on actual-innocence" in November 2021 and listed his claims as follows: "(1) impartial jury, (2) the jury received the wrong number of charges to deliberate on, (3) a Rule 412 violation, (4) prosecutorial misconduct, (5) double jeopardy, (6) ineffective assistance of trial counsel, and (7) ineffective assistance of appellate counsel." Defendant then detailed the evidence he attached in support of those claims, naming Dontae and Damien's affidavits the FOIA responses, and the e-mail from Director Tetzloff. Defendant also attached all of the same documentation to his third motion for leave to file.

¶ 50 Defendant argued that this court's decision in *Beard IV*, concluding that the evidence was not newly discovered, was erroneous because "the appellate court failed to realize that [the trial] court gave a specific order forbidding any contact with anyone under the age of 18." Defendant further claimed that he could not have obtained the FOIA responses or Tetzloff's e-mail at trial because S.W. never mentioned the dugout incident in her CAC interview and stated it

for the first time at trial. Defendant asserted that "the jury convicted [him] on the Park dugout incident" because he did not have this evidence. Defendant also argued that his defense counsel stated at the *Krankel* hearing that he could not establish an alibi defense because S.W. did not provide specific dates. Defendant insisted that the FOIA responses established his alibi defense because the officers had "first hand" knowledge that defendant was not living next to S.W. at the time. He also claimed that "Officer Squires [(the officer whose police report the FOIA response said did not exist)] was not known to me prior to trial or after trial." Defendant concluded by stating his most recent appellate counsel was ineffective for failing to argue all of his actual innocence claims.

¶ 51 In September 2024, the trial court issued an eight-page written order denying defendant's third motion for leave to file a successive petition. The court described defendant's motion as follows:

> "It is unclear what [defendant] is alleging as his claims of constitutional violations in his 3rd Motion for Leave to File Successive Post-Conviction Petition. [Defendant] alleges 'Actual innocence/ineffective assistance of appellate counsel' and then proceeds to allege much of what he has alleged in his original appeal (affirmed), initial Post Conviction Petition, 1st and 2nd Motions for Leave to File Successive Post Conviction Petition, all of which were summarily dismissed and affirmed by the Appellate Court. [Defendant] asserts 'The Appellate Court 4th Dist concluded that Dontae and Damien were known and living with the defendant at the time therefore the affidavits were not new. Although the 4th dist court and this court stated due to the fact these witnesses were known to me, the Appellate Court failed to realize that this court gave a specific order forbidding any contact with

anyone under the age of 18.' [Defendant] then later asserts: 'The question is does the affidavit of Alfred Beard, Amanda Harris, and the FOIA meet the *Strickland* 1984, *People v. Albanese* 1984, and *People v. Robinson*, 2020IL [*sic*] 123849 standard where counsel failed to argue his innocence. [Defendant] states that it does meet the Actual Innocence and Ineffective Assistance of Appellate Counsel prongs.' "

¶ 52 The trial court then set forth, in detail, the law applicable to successive postconviction petitions, including the cause and prejudice test and the elements of an actual innocence claim. The court then set forth its analysis as follows:

"[Defendant] asserts 'Actual Innocence/Ineffective Assistance of Appellate Counsel'. In relation to [defendant's] claim of actual innocence, [defendant] reasserts many of the arguments he has previously asserted in prior pleadings. [Defendant] highlights the affidavits of Alfred Beard, Amanda Harris, and the FOIA documents attached to his petition, all of which were also attached to his 1st and 2nd Motions for Leave to File Successive Post Conviction Petitions. The evidence in support of the claim must be 'newly discovered' material and not merely cumulative; and of such a conclusive character that it would probably change the result on retrial. The attached evidence is neither newly discovered nor of such a character that it would probably change the result on retrial. In addition it is cumulative of evidence that either was or could have been presented at trial through the named witnesses or other witnesses.

In examining [defendant's] claims of ineffective assistance of counsel, this court follows the two-pronged test of *Strickland v. Washington*, 466 U.S. 668, 687

(1984). *** The *Strickland* standard also applies to claims of ineffective assistance of appellate counsel. [Citation.] There is nothing in [defendant's] Motion for leave that would support a finding that appellate counsel's representation fell below an objective standard of reasonableness, and that but for this deficiency, there is a reasonable probability that counsel's performance was prejudicial to the defense. [Defendant] simply seems to assert that the Appellate Court was wrong in relation to affirming the Trial Court ruling on [defendant's] Motion for Leave to File 2nd Successive Post Conviction.

Finally, in Illinois, the law is clear: 'Rulings on issues that were previously raised at trial or on direct appeal are *res judicata*, and issues that could have been raised, but were not, are waived,' (*People v. Miller*, 203 Ill. 2d 433 (2002)). *** The issues [defendant] raises in his 3rd Motion for Leave to file Successive Post-Conviction have been raised on multiple occasions in his 1st and 2nd Motions for Leave to File Successive Post Conviction Petitions and in his original Post Conviction Petition and said issues were addressed, dismissed, appealed and affirmed. In addition to the inadequacies of [defendant's] current motion as set forth above, the issues presented are barred by *Res Judicata* or have been forfeited/waived.

The 3rd Motion for Leave to file Successive Post Conviction is DENIED."

¶ 53 In October 2024, defendant filed a motion to reconsider, which the trial court denied in November 2024.

¶ 54 This appeal followed.

¶ 55 II. ANALYSIS

¶ 56 Defendant appeals, arguing that the trial court erred by denying his third motion for leave to file a successive postconviction petition because he stated a claim of ineffective assistance of appellate counsel for counsel's failing to address all of defendant's newly discovered evidence on appeal in *Beard IV*.

¶ 57 We disagree and affirm.

¶ 58 A. The Applicable Law

¶ 59 It is clear from defendant's arguments that he has a fundamental misunderstanding of the principles of law governing successive claims under the Post-Conviction Hearing Act (Act) (725 ILCS 5/122-1 *et seq.* (West 2022)).

¶ 60 The Act provides a statutory procedure by which a defendant can pursue a claim that his conviction or sentence was based on a substantial denial of his constitutional rights. *People v. Clark*, 2023 IL 127273, ¶ 38. The Act is not a substitute for an appeal, and its purpose is to address constitutional claims that were not, and could not have been, determined on direct appeal. *Id.*; *People v. Robinson*, 2020 IL 123849, ¶ 42 ("Therefore, where a petitioner has previously challenged a judgment of conviction on appeal, the judgment of the reviewing court will serve to bar postconviction review of all issues actually decided by the reviewing court as well as any other claims that could have been presented to the reviewing court."). The Act itself makes clear that "[o]nly one petition may be filed by a petitioner under this Article without leave of the court" (725 ILCS 5/122-1(f) (West 2022)) and "[a]ny claim of substantial denial of constitutional rights not raised in the original or an amended petition is waived" (*id.* § 122-3). "For that reason, the doctrine of *res judicata* bars issues that were raised and decided on direct appeal, and forfeiture precludes issues that could have been raised but were not." *People v. Dorsey*, 2021 IL 123010, ¶ 31.

¶ 61 The Act contemplates the filing of a single postconviction petition. *Robinson*, 2020 IL 123849, ¶ 42. The filing of successive postconviction petitions is highly disfavored (*Clark*, 2023 IL 127273, ¶ 39), and a defendant must overcome "immense procedural default hurdles when bringing a successive postconviction petition" (*People v. Davis*, 2014 IL 115595, ¶ 32). "These hurdles are lowered only in very limited circumstances so as not to impede the finality of criminal litigation." *Dorsey*, 2021 IL 123010, ¶ 32. "The two grounds that allow a petitioner to file a successive postconviction petition *** are where the petitioner (1) can establish cause and prejudice for the failure to assert a postconviction claim in an earlier proceeding or (2) asserts a fundamental miscarriage of justice based on actual innocence." *People v. McCoy*, 2026 IL 131565, ¶ 48.

¶ 62 Principles of fundamental fairness allow courts to relax preclusive effects of the doctrines of *res judicata* and waiver, and such fundamental fairness "is established only by satisfying the requirements of the cause and prejudice test." *People v. Montanez*, 2023 IL 128740, ¶ 105. To demonstrate cause, a defendant "must show some objective factor external to the defense that impeded his ability to raise the claim in his initial postconviction proceeding." *People v. Jackson*, 2021 IL 124818, ¶ 30. For example, a showing that the factual or legal basis for a claim was not reasonably available to postconviction counsel will constitute cause. *People v. Blalock*, 2022 IL 126682, ¶ 39. "To establish 'prejudice,' the defendant must show the claimed constitutional error so infected his trial that the resulting conviction violated due process." *Jackson*, 2021 IL 124818, ¶ 30.

¶ 63 A defendant asserting a claim of actual innocence is not required to show cause and prejudice. See *id.* ¶ 27. The Illinois Supreme Court has set forth the applicable pleading standard for claims of actual innocence 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." *Robinson*, 2020 IL 123849, ¶ 47.

¶ 64 "Leave of court to file a successive petition should be denied when it is clear from a review of the successive petition and supporting documents that the claims raised fail as a matter of law or are insufficient to justify further proceedings." *Dorsey*, 2021 IL 123010, ¶ 33. For claims of actual innocence, leave to file should be denied when "the petition cannot set forth a colorable claim of actual innocence." *Robinson*, 2020 IL 123849, ¶ 44. For all other claims, leave to file should be denied when a defendant "fails to demonstrate a *prima facie* showing of both" cause and prejudice. *Montanez*, 2023 IL 128740, ¶ 79.

¶ 65 The standard of review for denial of leave to file a successive postconviction petition is *de novo*, meaning the reviewing court gives no deference to the trial court's decision when making its determination as to the legal sufficiency of the petition. *Robinson*, 2020 IL 123849, ¶¶ 39-40.

¶ 66 B. This Case

¶ 67 In his third motion for leave to file a successive postconviction petition, defendant argued that his appellate counsel in *Beard IV* rendered ineffective assistance by failing to argue all of the evidence supporting his actual innocence claims. On appeal, defendant primarily argues that the alleged ineffective assistance of appellate counsel in *Beard IV* provides a sufficient basis to avoid any procedural default for failure to raise the claim earlier and any *res judicata* preclusion. More specifically, defendant argues that the evidence appellate counsel in *Beard IV* did not address satisfies the actual innocence standard and those claims should be allowed to proceed in the trial court. That evidence is the FOIA responses and the park director's e-mail.

¶ 68 Based on the arguments in his third motion for leave to file and his briefs to this court, defendant is clearly arguing that appellate counsel in *Beard IV* rendered ineffective assistance by failing to argue all of the evidence supporting his actual innocence claims, which would have otherwise succeeded. Defendant is simply incorrect.

¶ 69 To begin, a defendant cannot raise a constitutional claim under the Act based on the ineffective assistance of postconviction counsel because a defendant has no constitutional right to the assistance of counsel in postconviction proceedings. See *People v. Flores*, 153 Ill. 2d 264, 276 (1992) ("[B]ecause the Act was designed to address only deprivations of constitutional magnitude, a petitioner's claim of ineffective assistance of post-conviction counsel at a prior post-conviction proceeding does not present a basis upon which relief may be granted under the Act."); *People v. Custer*, 2019 IL 123339, ¶ 30 ("[C]riminal defendants seeking relief in postconviction proceedings have no constitutional right to counsel, effective or otherwise."). To the extent defendant was asserting a claim of ineffective assistance of postconviction counsel, the trial court properly denied defendant's third motion for leave to file.

¶ 70 If we construe the third motion for leave to file liberally in defendant's favor, his allegations of ineffective of *Beard IV* appellate counsel could be construed as an attempt to make a showing of cause and prejudice. Although defendant's claims are predicated on actual innocence, he acknowledges that the claims in this third motion for leave are identical to the claims the trial court and this court rejected when addressing his second motion for leave. Accordingly, defendant must establish cause and prejudice to overcome the *res judicata* effect of this court's prior order.

¶ 71 1. *Cause*

¶ 72 Some Illinois courts have stated that claims of ineffective assistance of postconviction counsel may not establish cause for filing a successive petition. See *People v. Ruffin*, 2025 IL App (4th) 241192-U, ¶ 47 (collecting cases); *People v. Schwab*, 2023 IL App (5th) 220639-U, ¶ 20 (noting cause requires "a factor *external to the defense*," and a successive petition does not provide a forum to challenge the conduct of postconviction counsel at an earlier proceeding (emphasis in original)). Similarly, cause cannot be established when a claim has actually been raised in prior proceedings. See *Montanez*, 2023 IL 128740, ¶ 106 ("[A] [d]efendant cannot satisfy the cause prong of the test when he did, in fact, raise the specific claim he seeks to raise again in his successive petition. There can be no cause for failing to raise a claim in the initial proceeding when the claim was, in fact, raised in that proceeding." (Internal quotation marks omitted.)). Here, because all of defendant's actual innocence claims were asserted in his second successive postconviction petition, by definition the cause standard cannot be satisfied with respect to those claims.

¶ 73 2. *Prejudice*

¶ 74 Even if we assume that defendant could show cause for the trial court to grant his successive postconviction petition, defendant cannot show prejudice because he would need to

show that he stated a colorable claim of actual innocence—namely, that the supporting evidence was (1) newly discovered, (2) material and not cumulative, and (3) of such a conclusive character that it would probably change the result on retrial. Indeed, defendant's "supporting evidence," even if newly discovered, was simply cumulative and would not have had any probability to change the result on retrial. Defendant relies on two pieces of evidence to support his actual innocence claim—(1) the FOIA responses pertaining to the April 28, 2013, incident at Miller Park and (2) the e-mail from Director Tetzloff attached to Alfred's affidavit—and we address them in turn.

¶ 75 a. The FOIA Responses

¶ 76 Regarding the FOIA responses, defendant claims that he did not know the names of the officers at the time of trial and only received the responses in 2021, again after his first motion for leave to file a successive petition was denied. Defendant claims the FOIA responses provided objective evidence that he was no longer living in the apartments next to S.W. as of April 28, 2013, which provided him an alibi defense because S.W. testified that the incidents of abuse happened in May 2013.

¶ 77 The trial court correctly noted that these claims have been litigated repeatedly throughout this case. The FOIA responses pertained to an incident on April 28, 2013, when S.W. went missing for several hours and was found by defendant and police in Miller Park with Luke. Defendant testified about this incident at trial. He also raised this claim during the *Krankel* hearing that took place prior to his sentencing hearing. Defendant explained that two officers were present that night and could have corroborated his version of events. His trial counsel explained that he investigated the officers and the incident but decided not to call them as a matter of trial strategy. Specifically, trial counsel believed the only use for the officers' testimony would have been to

impeach Luke, but counsel did not want to impeach Luke after he testified favorably for the defense when explaining how he convinced S.W. to say defendant abused her. Trial counsel also noted that the events of April 28, 2013, were tangential and likely not admissible for any other purpose.

¶ 78 The trial court agreed with counsel's strategic decision and his assessment of the admissibility of the evidence. Accordingly, the court declined to appoint new counsel. Defendant raised his claim that the trial court erred by not appointing new counsel at the *Krankel* hearing in both his direct appeal and his first postconviction petition. Accordingly, defendant's claims regarding these officers had already been argued; the FOIA responses and any additional evidence would be cumulative of what had already been presented and would not affect the result.

¶ 79 For these same reasons, defendant or his appellate counsel could not show that the FOIA responses supported a claim of actual innocence because they were not newly discovered. Defendant fails to understand that he knew of these witnesses and their potential testimony prior to trial, even though he did not know their names and did not have their police reports. Counsel in fact investigated them and made a strategic decision not to call them. The trial court concluded that their testimony would not have been relevant other than for impeachment of Luke. We agreed with this assessment on direct appeal. In short, the trial court and this court have already determined that the failure to present this evidence was not prejudicial to defendant. And we again reiterate that the FOIA responses were not material to any issue at defendant's trial.

¶ 80 b. Alfred's Affidavit and the E-mail From Director Tetzloff

¶ 81 Regarding Alfred's affidavit and the e-mail from Director Tetzloff, defendant argues that such evidence was newly discovered because it was obtained in 2021 and could not have been obtained before trial, given that S.W. first mentioned the dugout during her trial

testimony. Defendant contends that the evidence is material and noncumulative because (1) the jury did not hear any evidence that dugouts were locked outside of during games and mowing and (2) proving that S.W. lied about that incident would have destroyed her credibility in an otherwise closely balanced case.

¶ 82 However, defendant never attempts to explain why he could not have raised this information in his initial postconviction petition. Although defendant may have become aware of this information only after his father obtained it, nothing prevented defendant from seeking out this information earlier. We acknowledge that defendant could not have presented this information at trial because S.W. did not disclose this information until she gave her trial testimony. Nonetheless, he was sentenced in 2014 and filed his initial postconviction petition in November 2017, which the Act required to contain *all* of his claims of constitutional deprivation. Because defendant could have presented this information in a prior proceeding, his claim is forfeited.

¶ 83 Even if we assume the evidence is newly discovered, it is not material. Defendant claims he was convicted for his conduct at O'Neil Park; however, that incident did not form the basis of any of the charges against him. Putting aside the obvious fact that the charges could not have been based on information first revealed by the victim at trial, S.W. testified unequivocally that she rejected defendant's solicitation and did not touch his penis. All of the charges of which defendant was convicted alleged sexual contact.

¶ 84 Moreover, we are not convinced by defendant's claim that this was such a closely balanced case that any objective evidence suggesting that S.W. was not telling the truth would have resulted in his acquittal on all counts. Notably, neither the State nor the defense mentioned the dugout incident during closing arguments. Additionally, it is not clear that Tetzloff's e-mail would have been admissible as impeachment because it was about a tangential matter.

¶ 85 Even had the e-mail been allowed, Tetzloff merely stated that the dugouts are locked unless a game or mowing is taking place. He did not state that the dugouts were completely inaccessible if locked. And defendant could have accessed the dugouts some other way (jumping a fence, for example), or S.W. could have been mistaken that the incident occurred inside the dugout as opposed to near it. For all these reasons, the impeachment value of this testimony is minimal, particularly when compared to the inconsistencies in S.W.'s statements in her interview and at trial, which were argued extensively to the jury.

¶ 86 D. Defendant's Abuse of the Court System

¶ 87 As the detailed background in this order shows, defendant has raised essentially the same claims for the fifth time. Defendant is well aware that his claims have been repeatedly rejected by every court to consider them because he detailed the procedural history of his case and even attached prior trial court and appellate court orders denying his claims.

¶ 88 The doctrine of *res judicata* bars consideration of all issues that were previously raised and definitively resolved by judicial decision. *Montanez*, 2023 IL 128740, ¶ 103. Any claims that were raised and rejected are barred by *res judicata*. That is, claims of error that have, in fact, been asserted, litigated, and rejected—either on direct appeal or in a subsequent postconviction proceeding—are barred and may not be reraised by a defendant in any successive petition under the Act. See *People v. Guerrero*, 2012 IL 112020, ¶ 17 ("Indeed, a ruling on an initial postconviction petition has *res judicata* effect with regard to all claims that were raised or could have been raised in the initial petition.").

¶ 89 Defendant's initial postconviction petition explicitly asserted the exact same claims that were litigated on direct appeal. His first motion for leave to file a successive postconviction petition also explicitly reraised those two direct appeal claims. His second and third motions for

leave to file asserted claims of actual innocence that were predicated on the same evidence underlying all of his prior challenges to his convictions. Defendant's claims are the same ones that he addressed at the *Krankel* hearing that were discussed, addressed, and rejected on their merits. Defendant has demonstrated that he is intent on wasting the trial court's and this court's time and resources by repackaging the same arguments. Apparently, he is unwilling to take no for an answer.

¶ 90 "A defendant is not permitted to develop the evidentiary basis for a claim in a piecemeal fashion in successive postconviction petitions, as defendant has attempted to do here." *Davis*, 2014 IL 115595, ¶ 55. We believe that without further action, defendant will continue to scrape together allegedly "new" evidence to support his same claims and relitigate those claims *ad infinitum*. See *People v. Donley*, 2015 IL App (4th) 130223, ¶ 41 ("[T]he normal disincentives that affect the general public, be they economic, professional, or social, do not apply to defendant. Simply put, defendant has nothing to lose by continuing to burden the courts with his frivolous pleadings."). Defendant's waste of scarce judicial resources must stop or, at the least, come at his own cost. See *People v. Moore*, 2023 IL App (4th) 210245, ¶ 79.

¶ 91 This court has written extensively in the past about the various tools that trial courts and the appellate court have at their disposal to deter and stop frivolous filers from continuing to raise frivolous claims. See *People v. Crenshaw*, 2026 IL App (4th) 250803, ¶¶ 32-52; *Moore*, 2023 IL App (4th) 210245, ¶¶ 54-76; *People v. Austin*, 2014 IL App (4th) 140408, ¶¶ 21-27. For instance, trial courts that expressly find that a collateral attack is frivolous have the ability to (1) trigger an administrative hearing to revoke up to 180 days of sentence credit (730 ILCS 5/3-6-3(d) (West 2024)), (2) assess and collect filing fees and court costs from a prisoner's trust account (735 ILCS 5/22-105(a) (West 2024)), and (3) impose additional monetary penalties or other appropriate sanctions pursuant to Illinois Supreme Court Rule 137(a) (eff. Jan. 1, 2018). See

Moore, 2023 IL App (4th) 210245, ¶¶ 58-72, 83 (noting that Rule 137 would permit a trial court to impose a monetary sanction and direct the circuit clerk to disregard filings until paid).

¶ 92 Appellate courts also have sanctions at their disposal under Illinois Supreme Court Rule 375 (eff. Feb. 1, 1994). See *Moore*, 2023 IL App (4th) 210245, ¶¶ 75-81. Recently, this court sanctioned a frivolous filer $20,000 after his tenth meritless appeal to this court from a frivolous collateral attack on his convictions. *Crenshaw*, 2026 IL App (4th) 250803, ¶ 56.

¶ 93 We caution defendant in this case that any continued litigation of these claims can and should result in sanctions against him. In the event defendant files yet another collateral attack premised on any of the claims he has previously raised, we encourage the trial court to review our opinions in *Crenshaw* and *Moore* and impose whatever sanctions it believes appropriate.

¶ 94 Similarly, should this court receive yet another appeal of these same claims or any other barred or frivolous claim, defendant should expect to receive a rule to show cause from this court asking why he should not be sanctioned. To be clear, we are not making any determination that sanctions will be imposed; that decision will be made if and when it arises and becomes appropriate. We are merely making absolutely clear the seriousness of the situation defendant will find himself in if he continues to abuse the court system as he has in this case.

¶ 95 III. CONCLUSION

¶ 96 For the reasons stated, we affirm the trial court's judgment.

¶ 97 Affirmed.

Decision Under Review:	Appeal from the Circuit Court of McLean County, No. 13-CF-1263; the Hon. William A. Yoder, Judge, presiding.
Attorneys for Appellant:	Alexander V. Beard, of Taylorville, appellant *pro se*.
Attorneys for Appellee:	Erika Reynolds, State's Attorney, of Bloomington (Patrick Delfino, David J. Robinson, and Brittany J. Whitfield, of State's Attorneys Appellate Prosecutor's Office, of counsel), for the People.