

2026 IL App (3d) 240647-U
No. 3-24-0647
Order filed October 5, 2026

NOTICE: This order was filed under Illinois Supreme Court Rule 23 and is not precedential except in the limited circumstances allowed under Rule 23(e)(1).

IN THE
APPELLATE COURT OF ILLINOIS
THIRD DISTRICT

THE PEOPLE OF THE STATE OF ILLINOIS, Plaintiff-Appellee,

v.

ROBERT GOLD-SMITH, Defendant-Appellant

Appeal from the Circuit Court of Will County.
Honorable Vincent F. Cornelius, Judge, Presiding.
No. 12-CF-2338

JUSTICE DAVENPORT delivered the judgment of the court.
Justices Holdridge and Peterson concurred in the judgment.

ORDER

¶ 1 *Held:* Defendant was not entitled to a certificate of innocence.

¶ 2 Defendant appeals the denial of his petition for a certificate of innocence after the State nol-prossed his charges for solicitation of murder for hire (720 ILCS 5/8-1.2(a) (West 2012)) and solicitation of murder (720 ILCS 5/8-1(b) (West 2012)). We affirm.

¶ 3 I. BACKGROUND

¶ 4 The facts of this case are set forth in defendant's previous appeals; therefore, we recite here only those facts necessary to the disposition of this appeal. See *People v. Gold-Smith*, 2019 IL App (3d) 160665; *People v. Gold-Smith*, 2022 IL App (3d) 170780-U.

¶ 5 On direct appeal, we reversed defendant’s convictions for solicitation of murder for hire (720 ILCS 5/8-1.2(a) (West 2012)) and solicitation of murder (720 ILCS 5/8-1(b) (West 2012)) and remanded for further proceedings. *Gold-Smith*, 2019 IL App (3d) 160665, ¶ 1. However, we noted,

“Our review of the record reveals that the evidence is such that a reasonable finder of fact *could* find Gold-Smith guilty of solicitation of murder beyond a reasonable doubt. In reaching that conclusion, we express no opinion as to whether or not he is guilty of the charged offenses and find only that principles of double jeopardy would not preclude retrial in this matter if deemed appropriate.” (Emphasis in original.) *Id.* ¶ 34.

In March 2023, the State nol-prossed the two charges.

¶ 6 In May 2023, defendant petitioned for a certificate of innocence. 735 ILCS 5/2-702 (West 2022). An evidentiary hearing on the petition was held in May 2024. At the request of the defense, the trial court took judicial notice of matters that had been tendered to the court, noting all matters were already part of the court record. This included the October 3, 2012, wire recording. At the hearing, the court only heard testimony from defendant and an investigator with the state’s attorney’s office; the parties stipulated to prior testimony from two inmates.

¶ 7 Defendant testified he was an inmate at the Will County jail in October 2012. Two inmates, Jason Gonzalez and Bradley Schlott, warned defendant of another inmate, Brian McDaniel. Gonzalez told defendant that McDaniel was going to frame defendant by whispering incriminating statements while wearing a wire and then falsely attributing those statements to defendant. Schlott informed defendant that he “felt” McDaniel was a snitch and was going to wear a wire. Defendant, Schlott, and inmate Darryl Stephenson agreed to always stay together so they could “defend and witness for each other.”

¶ 8 Defendant testified that on October 3 at 7:10 p.m., he was sitting in a row with Schlott and Stephenson watching TV. McDaniel sat behind them. That night, defendant did not engage in any conversation with McDaniel other than a minute of small talk. Defendant denied being the whispering voice on the wire recording and denied soliciting McDaniel to kill defendant's ex-wife.

¶ 9 The parties stipulated to Schlott's and Stephenson's prior testimony. The court admitted certified copies of their convictions.

¶ 10 Schlott previously testified on defendant's motion to dismiss the indictment in August 2015. He testified he sat with defendant and Stephenson on October 3, 2012, watching TV. That night, McDaniel walked between the phones and seating area multiple times. Defendant was never out of Schlott's sight or hearing range. The alleged conversation between defendant and McDaniel never took place because Schlott would have heard it.

¶ 11 Stephenson testified at the bench trial in January 2016. He sat with defendant and Schlott on October 3, 2012, watching TV. McDaniel intermittently sat behind them. Stephenson was on the phone for 20 minutes, but defendant did not go by the phones during that time.

¶ 12 Shawn Filipiak, investigator with the Will County State's Attorney's Office, testified he interviewed McDaniel in February 2023. McDaniel said he has seizures and other medical problems, and he "alluded to the fact that he has memory issues." Filipiak did not ask McDaniel if he remembered any of the events on October 3, 2012.

¶ 13 During closing arguments, the trial court asked defense counsel about defendant's recorded phone conversations from October 2012 with Julio Centeno,

"wherein, your client said to Mr. Centeno that he was aware that McDaniel was a snitch and that he was following him around. And he said what he needed to say to get rid of him.

I inquire about that and invite argument on that, because one of the things that you have

raised just now was that Mr. Gold-Smith did not in any way contribute to his conviction, as the case law and the statute provides. And that raised my eyebrows a bit.”

Defense counsel argued this only proves defendant had conversations with McDaniel before October 2. But the court noted these conversations between defendant and Centeno occurred after McDaniel wore the wire.

¶ 14 On June 13, 2024, the trial court denied defendant’s petition. In its ruling, the court noted during a recorded phone call between defendant and Centeno, defendant “is heard to say, ‘He told the snitch what he wanted to hear, so he would go away.’ ” The court drew the inference that defendant did say something to the informant that led to his conviction, and for that reason, it could not find that defendant proved by a preponderance of the evidence he was innocent of the offenses charged. Further, the court found based on this statement to Centeno, the inference can be drawn that defendant voluntarily communicated with the informant in a way he adamantly denied, thereby leading to his conviction.

¶ 15 On July 12, 2024, defendant filed a combined “motion to vacate judgment denying petition for certificate of innocence and motion to reconsider judgment denying petition for certificate of innocence,” purportedly under section 2-1401 of the Code of Civil Procedure (735 ILCS 5/2-1401 (West 2022)). Defendant alleged there was newly discovered evidence, in the form of an affidavit from McDaniel, that entitles defendant to a new hearing on his petition. The affidavit, dated July 3, 2024, states the whispering voice on the wire recording belonged to McDaniel, not defendant. According to the affidavit, McDaniel was previously unwilling to sign this affidavit or testify at any proceeding because he feared retaliation and possible prosecution. Had he been subpoenaed to testify at the hearing on the petition for a certificate of innocence, he would have asserted his right not to testify. But now he avers he is willing to testify at an evidentiary hearing.

¶ 16 The trial court heard arguments on the combined motion on November 6, 2024. During the hearing, defense counsel said he was in contact with McDaniel before the May 2024 hearing on the petition for a certificate of innocence, and told the court McDaniel’s “position was that he would take the 5th if he is called to testify.” Defense counsel also reported McDaniel’s “position would be different with respect to Mr. Gold-Smith’s civil case. But *** he didn’t want to be testifying in a Will County courtroom.”

¶ 17 In denying defendant’s motion to reconsider, the trial court said defendant’s arguments did not undermine the basis for its original ruling, which was that defendant’s own conduct had brought about his conviction. Specifically, the court noted it had previously found that defendant told McDaniel what he wanted to hear so McDaniel would leave defendant alone. The court observed, “So it is from [defendant’s] own lips that this court is able to draw the reasonable inference that he said something to [McDaniel] that led to his conviction.” Because the motion to reconsider did not disturb that inference, the court denied the motion.

¶ 18 In denying the section 2-1401 petition, the trial court found “a lack of due diligence in filing a 2-1401 petition because there was contact with this person [*i.e.*, McDaniel] who said there was a situation or circumstance where he would be willing to help and a circumstance where he would not be willing to help.”

¶ 19 Defendant appeals.

¶ 20 II. ANALYSIS

¶ 21 On appeal, defendant argues the trial court erred in denying his petition for a certificate of innocence because he proved by a preponderance of the evidence that he was innocent and that he did not voluntarily bring about his own conviction. Further, he argues the trial court erred in denying his section 2-1401 petition without holding an evidentiary hearing.

¶ 22

A. Certificate of Innocence

¶ 23 The decision whether to grant or deny a petition for a certificate of innocence is at the discretion of the trial court. See 735 ILCS 5/2-702(a) (West 2022). Initially, we note the split in authority regarding the appropriate standard—abuse of discretion or manifest weight of the evidence—to be applied in reviewing a ruling on a petition for a certificate of innocence. See *People v. Washington*, 2023 IL 127952, ¶ 47 (noting the split in authority on the standard of review question but declining to address it). This district has applied the abuse of discretion standard. See *People v. Pollock*, 2014 IL App (3d) 120773, ¶ 27; *People v. Jones*, 2024 IL App (3d) 210414, ¶ 13. One panel of the First District has applied the manifest weight standard. See *People v. McIntosh*, 2021 IL App (1st) 171708, ¶ 40. “An abuse of discretion occurs only where the trial court’s decision is arbitrary, fanciful, or unreasonable to the degree that no reasonable person would agree with it” while a decision is “against the manifest weight of the evidence only when the opposite conclusion is clearly evident.” *Pollock*, 2014 IL App (3d) 120773, ¶ 27. Both the abuse of discretion standard and the manifest weight standard are deferential standards of review. *People v. Terrell*, 2022 IL App (1st) 192184, ¶ 51. The analysis under either standard is the same: whether there was evidentiary support for the judge’s decision. *Pollock*, 2014 IL App (3d) 120773, ¶ 27. We need not decide which standard of review applies, because under either deferential standard, we find defendant was not entitled to a certificate of innocence. See *Washington*, 2023 IL 127952, ¶ 47.

¶ 24 In order to obtain a certificate of innocence under section 2-702, a petitioner must prove by a preponderance of the evidence that:

“(1) the petitioner was convicted of one or more felonies by the State of Illinois and subsequently sentenced to a term of imprisonment, and has served all or any part of the sentence;

(2)(A) the judgment of conviction was reversed or vacated, and the indictment or information dismissed or, if a new trial was ordered, either the petitioner was found not guilty at the new trial or the petitioner was not retried and the indictment or information dismissed; ***

(3) the petitioner is innocent of the offenses charged in the indictment or information ***; and

(4) the petitioner did not by his or her own conduct voluntarily cause or bring about his or her conviction.” 735 ILCS 5/2-702(g) (West 2022).

A petitioner must prove all four statutory requirements by a preponderance of the evidence; the failure to prove any one defeats the petition. See *People v. Moore*, 2020 IL App (1st) 190435, ¶ 21. The trial court found that defendant established subsections (g)(1) and (g)(2) but not subsection (g)(4), and that he therefore could not establish subsection (g)(3). We address the two contested elements in turn, beginning with subsection (g)(4).

¶ 25 Subsection (g)(4) required defendant to prove that he did not, by his own conduct, voluntarily cause or bring about his conviction. 735 ILCS 5/2-702(g)(4) (West 2022). Whether a petitioner voluntarily caused or brought about his conviction is determined on a case-by-case basis, considering the totality of the circumstances. *Washington*, 2023 IL 127952, ¶¶ 42, 62. The trial court found defendant failed to carry that burden, and the record supports that finding. The court relied on defendant’s own words in a recorded jail phone call with Centeno that occurred after McDaniel had worn the wire. In that call, defendant stated that he told the snitch “the stuff he

wanted to hear just to get rid of him.” From defendant’s own admission, the trial court drew the inference that defendant “did voluntarily communicate with the informant in a way that he adamantly denies and thereby leading to his conviction,” later explaining that “it is from [defendant’s] own lips that this court is able to draw the reasonable inference that he said something to [McDaniel] that led to his conviction.”

¶ 26 That inference was reasonable and supported by the evidence. Defendant knew McDaniel was suspected of wearing a wire, his recorded statement during a phone call described telling McDaniel what he wanted to hear, and the recording McDaniel obtained captured a solicitation to murder defendant’s ex-wife. The trial court was entitled to credit defendant’s own recorded admission over his contrary hearing testimony, and its inference was neither arbitrary, fanciful, nor unreasonable, nor was the opposite conclusion clearly evident. We agree with the trial court that defendant did not prove, by a preponderance of the evidence, that he did not voluntarily cause or bring about his own conviction. That failure alone was fatal to his petition. See *Moore*, 2020 IL App (1st) 190435, ¶ 21.

¶ 27 The record likewise supports the trial court’s finding that defendant did not prove subsection (g)(3)—that he is innocent of the charged offenses. On direct appeal, in holding that retrial was permissible, this court determined that “the evidence is such that a reasonable finder of fact *could* find Gold-Smith guilty of solicitation of murder beyond a reasonable doubt.” *Gold-Smith*, 2019 IL App (3d) 160665, ¶ 34. That determination binds both the trial court and this court under the law-of-the-case doctrine, which covers “not only the [reviewing] court’s explicit decisions, but those issues decided by necessary implication.” *Rommel v. Illinois State Toll Highway Authority*, 2013 IL App (2d) 120273, ¶ 15. Evidence sufficient to permit a rational trier of fact to find defendant guilty beyond a reasonable doubt cannot, at the same time, establish his

innocence by a preponderance of the evidence. Taken together with the trial court's finding that defendant's own conduct contributed to his conviction, defendant fell well short of proving his innocence. The trial court correctly found that defendant failed to prove subsection (g)(3).

¶ 28 Defendant's contrary arguments do not require a different result. He contends that the testimony of Schlott, Stephenson, and Gonzalez, together with his own testimony, was un rebutted and had to be credited under *Washington*. But un rebutted testimony may be disregarded when it is "contradicted," "inherently improbable," or "impeached." *Washington*, 2023 IL 127952, ¶ 56. Unlike in *Washington*, where the State did not participate and the petitioner's evidence stood unchallenged, here the State opposed the petition, and both parties asked the court to consider the underlying trial record. The defense evidence conflicted with the testimony of McDaniel and Victoria Smith and with the wire recording, and the defense witnesses were impeached. Inherent in a certificate of innocence proceeding, the trial court must weigh the evidence and resolve any credibility issues in determining whether the petitioner met his burden—matters committed to the discretion of the trial court. *People v. Rodriguez*, 2021 IL App (1st) 200173, ¶ 44. The trial court was therefore free to weigh the conflicting evidence and assess credibility, and we will not reweigh that evidence on review. See *People v. Lee*, 2012 IL App (1st) 101851, ¶ 32 ("credibility determinations are within the province of the trier of fact, and we will not reweigh the evidence or substitute our judgment for that of the trial court where conflicting testimony exists.").

¶ 29 Accordingly, under either the abuse of discretion or the manifest weight of the evidence standard, the trial court's denial of defendant's petition for a certificate of innocence was not in error.

¶ 31 Defendant argues, alternatively, this cause should be reversed and remanded for an evidentiary hearing on the section 2-1401 petition. He argues McDaniel’s affidavit is newly discovered evidence, and McDaniel’s testimony that he fabricated evidence against defendant is so conclusive it would likely change the result at the hearing on the certificate of innocence. The State argues defendant’s motion cannot be considered a section 2-1401 petition because it was filed 29 days after the trial judge denied the petition for a certificate of innocence. Moreover, McDaniel’s affidavit is not newly discovered, because defense counsel was in contact with McDaniel, and failing to subpoena McDaniel to testify at the hearing demonstrates a lack of due diligence. We agree with the State.

¶ 32 According to section 2-1401, “[r]elief from final orders and judgments, after 30 days from the entry thereof, may be had upon petition as provided in this Section.” 735 ILCS 5/2-1401(a) (West 2022). Defendant’s petition was filed 29 days after the trial court denied his petition for a certificate of innocence. We construe the purported “section 2-1401 petition” as simply an additional argument for reconsideration. See *Babcock v. Wallace*, 2012 IL App (1st) 111090, ¶ 25 (treating a section 2-1401 petition as a section 2-1203 motion “because defendant filed it less than 30 days after the circuit court entered judgment”).

¶ 33 “In all cases tried without a jury, any party may, within 30 days after the entry of the judgment or within any further time the court may allow within the 30 days or any extensions thereof, file a motion for a rehearing, or a retrial, or modification of the judgment or to vacate the judgment or for other relief.” 735 ILCS 5/2-1203 (West 2022). “The intended purpose of a motion to reconsider is to bring to the court’s attention newly discovered evidence, changes in the law, or errors in the court’s previous application of existing law.” *General Motors Acceptance Corp. v.*

Stoval, 374 Ill. App. 3d 1064, 1078 (2007). “ ‘Newly discovered’ evidence is evidence that was not available prior to the hearing and trial courts should not allow litigants to stand mute, lose a motion, and then frantically gather evidentiary material to show that the court erred in its ruling.” *Id.* The decision to grant or deny a motion for reconsideration lies within the discretion of the trial court and will not be reversed absent an abuse of that discretion. *Id.*

¶ 34 Here, the trial court did not abuse its discretion in denying the motion to reconsider based on a lack of due diligence. Although the trial court ruled based on the section 2-1401 standard, we can affirm on any basis. See *People v. Gawlak*, 2019 IL 123182, ¶ 39 (reviewing court may affirm on any basis in the record). Due diligence is also required for the court to consider new evidence in a section 2-1203 motion to reconsider.

“To justify setting aside a prior order based on newly discovered evidence, (1) the party seeking to overturn the order must show due diligence in discovering the evidence; (2) the party must also show that he could not have produced the evidence at the first trial by exercising due diligence; (3) the party must demonstrate that the evidence is so conclusive that it would probably change the trial result; (4) the evidence must be material and relate to the issues; and (5) the evidence cannot be merely cumulative or serve the sole purpose of impeachment.” *In re Marriage of Wolff*, 355 Ill. App. 3d 403, 409-10 (2005).

Defendant did not demonstrate due diligence in obtaining McDaniel’s affidavit. Counsel had contact with McDaniel prior to the May 2024 hearing. Defendant offered no explanation as to why he did not subpoena McDaniel for the certificate of innocence hearing, only that McDaniel would have invoked his fifth amendment privilege against self-incrimination. However, “[i]t is within the trial court’s discretion to determine whether the witness has a valid basis for invoking his fifth amendment right against incrimination.” *People v. Brown*, 303 Ill. App. 3d 949, 962-63 (1999).

“Neither an unreasonable fear of self-incrimination nor a mere reluctance to testify is a ground for claiming the privilege.” *People v. Redd*, 135 Ill. 2d 252, 304 (1990). “Furthermore, the mere say-so of a witness does not of itself establish the hazard of incrimination.” (Internal quotation marks omitted.) *Id.* Although McDaniel may have been reluctant to testify, due diligence required issuing a subpoena for McDaniel to testify at defendant’s certificate of innocence hearing, and then if McDaniel indeed invoked his fifth amendment privilege, it was the trial court’s role to determine whether he had a valid basis. But defendant did not subpoena McDaniel. Therefore, because defendant lacked due diligence in obtaining McDaniel’s affidavit, the court’s denial of his motion to reconsider was not an abuse of discretion.

¶ 35

III. CONCLUSION

¶ 36 For the reasons stated, we affirm the judgment of the circuit court of Will County.

¶ 37 Affirmed.