2026 IL App (1st) 242232-U

No. 1-24-2232

Order filed November 6, 2026

NOTICE: This order was filed under Illinois Supreme Court Rule 23(b) and is not precedential except in the limited circumstances allowed under Rule 23(e)(1).

IN THE

APPELLATE COURT OF ILLINOIS

FIRST DISTRICT, SIXTH DIVISION

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

v.

ELRON CATHEY, Defendant-Appellant

Appeal from the Circuit Court of Cook County.
Honorable Angela Munari Petrone, Judge, Presiding.
No. 04 CR 15038

JUSTICE EVANS delivered the judgment of the court.
Presiding Justice Gamrath and Justice Hyman concurred in the judgment.

ORDER

¶ 1 *Held*: The circuit court did not err when it denied Cathey leave to file a successive postconviction petition.

¶ 2 Elron Cathey appeals the circuit court's denial of his leave to file a successive postconviction petition pursuant to the Post-conviction Hearing Act (Act) (725 ILCS 5/122-1 *et seq*. (West 2022)). Cathey alleges that he made a colorable claim of actual innocence and should have been allowed to file his successive *pro se* petition. We affirm the circuit court's order denying leave to file the petition.

¶ 3 I. BACKGROUND

¶ 4 Cathey was found guilty of aggravated battery with a firearm (720 ILCS 5/12-4.2 (West 2004)) in connection with a June 8, 2004 shooting. We recount only those facts relevant to the issue on appeal.

¶ 5 Maurice Sterling was with his friend, Brian Finley, when he was shot in the head in June 2004. Sterling spent three months in the hospital and has lasting effects from the shooting. At trial, Sterling could not remember any details about the shooting.

¶ 6 Brian recalled receiving a call from his brother Xavier on the night of the shooting. Xavier stated Cathey was trying to kill Xavier. After searching for Xavier, Brian had an altercation with Cathey regarding the whereabouts of Xavier. After exchanging words, Sterling and Brian exited Brian's car and Brian saw a person hand Cathey something large and black.

¶ 7 Sterling yelled, "He got a gun." As Sterling and Brian ran towards Brian's car, Brian heard a loud noise. Sterling's body jerked and then fell into the car. Brian drove Sterling to his home, where Brian's mother called the police and an ambulance.

¶ 8 Brian told the responding officer that Cathey had shot Sterling. The officer drove Brian to Cathey's home, and Brian identified Cathey as the shooter.

¶ 9 While at trial Xavier denied telling Brian that Cathey was after him, Xavier acknowledged making a police statement indicating he had told Brian such.

¶ 10 Officer Robert Garcia was on patrol the night of the shooting and heard a call relaying there was a shooting and then that Cathey was the shooter and lived on the 8600 block of Kingston. When Garcia arrived at Cathey's location, he saw Cathey sitting out front in a chair, sweating profusely. As Garcia arrested Cathey, Cathey told him, "You got to do what you got to do."

¶ 11 Garcia did not recover a weapon but he did discover a live .45 caliber round in a window ledge at Cathey's address

¶ 12 Gunshot residue tests were administered to both Brian and Cathey. Brian tested negative for residue, but Cathey's results indicated he had either (1) discharged a firearm, (2) been in an environment of a firearm, or (3) had contact with an item with gunshot residue on it.

¶ 13 Cathey testified he was walking home when a car arrived. Two men he did not know jumped out of the car, and one asked where his brother was. Brian then pulled out a gun and moved toward Cathey. They wrestled and Cathey ended up behind Brian, with his left hand on Brian's right hand. As they spun 180 degrees, the gun discharged. Cathey pushed Brian and ran home.

¶ 14 James Johnson and his cousin, Mark Manny, were on their Aunt's front porch on the 8600 block of South Kingston when they saw a car stop and a man exit the car. Johnson saw the man begin fighting with another person. He did not see a gun but heard a gunshot. Johnson and Cathey had been friends for at least a decade.

¶ 15 The jury found Cathey not guilty of attempted first degree murder (720 ILCS 5/8-4 (*id.* § 5/9-1) (West 2004)), and guilty of aggravated battery with a firearm (*id.* § 5/12-4.2 (West 2004)). The court imposed an extended-term sentence of 40 years' imprisonment.

¶ 16 On direct appeal, this Court affirmed Cathey's conviction and sentence over his arguments that (1) the evidence was insufficient, (2) the court erred by allowing the State to impeach him with a prior conviction, and (3) his sentence was excessive. See *People v. Cathey*, No. 1-06-0460 (March 23, 2007). The supreme court denied Cathey leave to appeal. *People v. Cathey*, No. 104752.

¶ 17 In 2008, Cathey filed an initial *pro se* postconviction petition under the Act asserting, among other issues, that he received ineffective assistance from trial counsel. The circuit court

summarily dismissed the petition and this Court affirmed the dismissal order. See *People v. Cathey*, 406 Ill. App. 3d 503 (2010).

¶ 18 The supreme court granted Cathey leave to appeal and reversed our decision, finding Cathey had raised the gist of an ineffective assistance claim. *People v. Cathey*, 2012 IL 111746.

¶ 19 On remand, appointed counsel filed a supplemental petition. The State filed a motion to dismiss and the circuit court held a second stage hearing. The court granted the motion to dismiss and Cathey appealed. *People v. Cathey*, 2022 IL App (1st) 211170-U. We affirmed the dismissal. *Id*.

¶ 20 In 2022, Cathey sought leave to file a successive *pro se* postconviction petition, claiming actual innocence. He attached to his motion an affidavit from Maurice Sterling who averred that he had given a June 2022 video statement of the events surrounding the June 2004 shooting incident.

¶ 21 Cathey noted that because Sterling was shot in the head, he had lost his memory at the time of trial; however, he stated that "based on the determination that anything lost can be found," Sterling's "new found memory effectively qualifies as newly discovered evidence of actual innocence." He further argued that "the essence" of his due process was "blotted out" by Sterling's inability to remember the shooting at the time of the trial.

¶ 22 In the affidavit, consistent with his trial testimony, Sterling stated he and his friend Brian were driving around looking for Xavier. However, Sterling differed from his trial testimony when he averred that he handed a firearm to Brian before Brian stepped out of the car. "Next thing [he] knew, [he] was shot." He continues that he "really thought Brian had shot [him]," he "kn[e]w Elron didn't," and he stated "Free Elron."

¶ 23 Cathey relied on *People v. Lusby*, 2020 IL 124046, to support his arguments that Sterling's affidavit establishes proof that Brian "had the power and intention to exercise constructive possession, dominion, and control over a firearm," and completes the story "of what is and was otherwise a chronological and conceptual void of the evidence."

¶ 24 Cathey subsequently filed a plethora of *pro se* motions, including: (1) motions for status, (2) notices of appeal, (3) a motion "to obtain blood splatter testing," (4) a motion and petition for leave to supplement his proposed successive postconviction petition, (5) a motion for substitution of judge, and (6) a section 2-1401 petition.

¶ 25 In October of 2024, the circuit court issued three written orders: one dismissing Cathey's motions to obtain blood splatter testing, one denying the motion for substitution of judge, and another addressing Cathey's motion for leave to file (and supplement) a successive postconviction petition.

¶ 26 As to the proposed successive petition, the court acknowledged Cathey attached an affidavit he purported was from Sterling but noted Sterling's name was printed and not signed. The written order stated Cathey "presents his un-notarized 'affidavit' of his version of facts as he testified to the jury and asserts his version of events was 'no less plausible than Brian Finley's."

¶ 27 The court noted Cathey's actual innocence claim

> "is premised on a video statement by Maurice Sterling. However, no video statement has been produced. No transcript of a video statement has been produced. No affidavit from the person who supposedly took the video statement, Kimberly Whitehead-Riles, has been produced. No explanation is given as to the lack of affidavits and supporting documentation.

> Regarding the affidavit from Maurice Sterling, there is no explanation given as to how Sterling's memory function improved in the 20 years since he was shot in the head. Aside from that, and taking what the affidavit says as true, it is not of such conclusive character it would probably result in acquittal. *It does not state that Maurice Sterling saw who shot him*. It presents a conclusory statement: 'I know Elron didn't shoot me' without any facts to support that conclusion. It presents evidence that is not newly discovered and is cumulative to what was heard at trial – that Brian Finley was at the scene of the shooting with Maurice Sterling." (Emphasis in original.)

¶ 28 The court denied Cathey leave to file a successive postconviction petition, noting he failed to demonstrate that the bar against successive petitions should be relaxed where he failed to demonstrate actual innocence. Cathey timely appealed.

¶ 29 II. ANALYSIS

¶ 30 On appeal, Cathey argues the circuit court erred in denying him leave to file a successive postconviction petition, where he presented a colorable claim of actual innocence.

¶ 31 The Act (725 ILCS 5/122-1 *et seq*. (West 2022)) enables an imprisoned person to challenge their conviction based on alleged constitutional violations that occurred during their trial or at sentencing. *People v. Dupree*, 2018 IL 122307, ¶ 28. A petition filed under the Act is a collateral action to review issues that were not and could not have been adjudicated on direct appeal. *People v. Robinson*, 2020 IL 123849, ¶ 42; *People v. Clark*, 2023 IL 127273, ¶ 38. Issues decided on direct appeal are barred by *res judicata* and issues that could have been raised, but were not, are forfeited. *People v. Blair*, 215 Ill. 2d 427, 442 (2005).

¶ 32 The Act contemplates the filing of only one petition. *Lusby*, 2020 IL 124046, ¶ 27. Fundamental fairness, however, requires we relax this statutory bar to allow a successive

proceeding in two instances: where a petitioner establishes cause and prejudice for failing to assert the claim in an earlier proceeding or where they assert actual innocence. *People v. McCoy*, 2026 IL 131565, ¶ 48.

¶ 33 A petitioner must obtain leave of court prior to filing a successive postconviction petition. *Id*. ¶ 49. For those seeking to file on a claim of actual innocence, " 'if leave to file is granted, a successive petition is docketed for second-stage proceedings, at which the petitioner must make a substantial showing of actual innocence to warrant an evidentiary hearing.' " *Id*. (quoting *Robinson*, 2020 IL 123849, ¶ 42).

¶ 34 We review the trial court's denial of a motion for leave to file a successive petition *de novo*. *People v. Bailey*, 2017 IL 121450, ¶ 13. We neither resolve evidentiary questions, nor do we engage in any fact-finding or credibility determinations. *Domagala*, 2013 IL 113688, ¶ 35. Instead, all well-pled factual allegations are taken as true unless positively rebutted by the trial record. *Id*. But nonfactual and nonspecific assertions amounting to conclusions are insufficient. *Id*.

¶ 35 To support a claim of actual innocence, a petitioner must submit evidence that is (1) newly discovered, (2) material and not cumulative, and (3) of such conclusive character that it would probably change the result on retrial. *Beard*, 2023 IL App (1st) 200106, ¶ 37.

¶ 36 Evidence is newly discovered if it was discovered after trial and could not have been discovered earlier through due diligence. *Robinson*, 2020 IL 123849, ¶ 47. "Material" means the evidence is relevant and probative of the petitioner's innocence. *Id*. Evidence is noncumulative if it adds to the information the fact finder heard at trial. *Id*. Evidence is of "such conclusive character" when, considered with the trial evidence, it would probably lead to a different result. *Id*. Of all the actual innocence elements, the conclusive character is the most important. *Id*.

¶ 37 While the new evidence need not be entirely dispositive, it must place "the trial evidence in a different light and undermine the court's confidence in the judgment of guilt." *Id*. ¶ 48. Leave to file should be granted where the supporting documentation raises the probability that it is more likely than not that no reasonable juror would have convicted the defendant considering the new evidence. *Id*. ¶¶ 44, 50.

¶ 38 Cathey claims he has raised a colorable claim of actual innocence where his motion for leave to file was supported with a notarized affidavit from Sterling averring he handed Brian a firearm just before Sterling was shot, "corroborating Cathey's version of events."

¶ 39 In the affidavit, Sterling recalls sitting in Brian's car while Brian had words with "someone." He recollects giving Brian his firearm and Brian exiting the car. Then, the "next thing [he] knew [he] was shot." Sterling thereafter "confront[ed]" Brian about the shooting, but Brian "didn't say anything." Sterling avers he "really thought Brian had shot me."

¶ 40 Lastly, he twice states that he "knows" Cathey did not shoot him and says "Free Elron." Sterling's affidavit is the sole basis of Cathey's innocence claim.

¶ 41 This evidence in the affidavit is newly discovered, Cathey argues, because Sterling was shot in the head and consequently lost his memory. At the time of trial, Sterling's only recollection was that he was shot in the back of the head while with Brian. See *Cathey*, 2022 IL App (1st) 211170-U, ¶ 12. Since Sterling had no recollection of the shooting at the time of trial, Cathey contends it could not have been discovered through due diligence.

¶ 42 The State counters that the evidence is not newly discovered and notes that neither Sterling nor Cathey offer an explanation as to how Sterling regained memory of the shooting 18 years thereafter. In response, Cathey does not address how Sterling regained his memory. Instead, Cathey

maintains that the relevant fact is that Sterling recovered his memory at some point after trial; when he regained it is immaterial.

¶ 43 In so arguing, Cathey relies on *People v. Harris* for the proposition that our supreme court has "adhered to its precedent and only considered whether the newly discovered evidence the petitioner presented in support of his actual innocence could have been discovered before trial." 2024 IL 129753, ¶ 61. Despite the lack of explanation as to how Sterling was able to recover his memory of the shooting, we agree that, liberally construed, Sterling's affidavit could be considered new evidence. See *Id.*

¶ 44 We need not determine whether Cathey can prove the evidence is newly discovered, however, where we find Cathey is unable to show that the evidence is "of such conclusive character" that it would probably change the result on retrial. See 2020 IL 123849, ¶ 47 (noting "the conclusive character of the new evidence is the most important element of an actual innocence claim."). Cathey's claim fails where " 'it does not raise the probability that, in the light of the new evidence, it is more likely than not that no reasonable juror would have convicted petitioner.' " *People v. Edwards*, 2012 IL 111711, ¶ 40.

¶ 45 Taking the substance of Sterling's affidavit to be true, as we must, the evidence fails to support Cathey's claim of actual innocence. Sterling offers no evidence that Cathey did not commit the June 8, 2004 shooting. Rather, he offers a conclusory statement that he "know[s]" Cathey did not shoot him and states that he had previously believed Brian to be the shooter. This statement expresses " 'a factual inference without stating the underlying facts on which the inference is based.' " *People v. Griffin*, 2024 IL 128587 (quoting Black's Law Dictionary (11th ed. 2019) definition of a conclusory statement).

¶ 46 Sterling's statement contradicts Brian's testimony that neither he nor Sterling had a firearm. While this supports part of Cathey's account, it does not establish that Brian used that firearm in the shooting, nor does it exclude the possibility that Cathey fired a different firearm.

¶ 47 Although Sterling's affidavit corroborates Cathey's testimony that Brian possessed a firearm, it does not corroborate his account of a struggle. Sterling does not state there was any sort of scuffle or struggle between Brian and Cathey over a weapon. Further, Sterling is clear in the affidavit that he does not know who shot him, as "Brian got out and the next thing I knew I was shot." *C.f. People v. Jones*, 2017 IL App (1st) 123371 (affirming denial of leave to file a successive postconviction petition where affidavit from codefendant did not assert that defendant was not present when the shooting took place and the evidence established there was more than one shooter).

¶ 48 The evidence at trial was not close and Sterling's affidavit neither refutes his trial testimony nor the other circumstances which implicated Cathey in the shooting—Cathey was present in the vicinity, he was out of breath and sweaty when the police encountered him on the block of the shooting, he had argued with the victim's friend Brian, Brian identified him as the shooter, and he tested positive for gunshot residue on his hand. Sterling offers no facts or information that supports his claim that he knows Cathey did not shoot him.

¶ 49 Instead, Sterling offers only an unsupported, conclusory belief that we should "free Elron," as he could not have been the shooter, because "when Elron got out of jail Elron was helping everyone." This belief is not a well-pled fact that we are required to take as true. Simply put, Sterling's affidavit is neither exculpatory nor exonerating.

¶ 50 We recognize "the conclusive-character test does not require total vindication or exoneration." *People v. Ruhl*, 2021 IL App (2d) 200402, ¶ 90. But Sterling's conclusory statements

are insufficient to place the trial evidence in a different light and undermine the court's confidence in the judgment of guilt. See *Beard*, 2023 IL App (1st) 200106, ¶ 53 (noting that nonfactual and nonspecific conclusory assertions are insufficient); *Robinson*, 2020 IL 123849, ¶¶ 55-56.

¶ 51 As Sterling's affidavit neither places the trial evidence in a different light nor undermines our confidence in Cathey's guilt, we cannot say that the evidence is of such conclusive character that it would probably change the result on retrial.

¶ 52 III. CONCLUSION

¶ 53 Where Cathey failed to raise a colorable claim of actual innocence, we find the circuit court properly denied leave to file Cathey's successive postconviction petition and accordingly affirm the circuit court's judgment

¶ 54 Affirmed.