2026 IL App (1st) 241608-U

No. 1-24-1608

Filed September 9, 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, Plaintiff-Appellee, v. DONZELL THOMAS, Defendant-Appellant.	)))))))))	Appeal from the Circuit Court of Cook County. No. 06 CR 22884 Honorable Timothy J. Joyce Judge, Presiding.

JUSTICE MARTIN delivered the judgment of the court.
Justices Lampkin and Rochford concur in the judgment.

ORDER

¶ 1 *Held*: The circuit court did not abuse its discretion in denying defendant's motion to withdraw his postconviction petition.

¶ 2 Donzell Thomas appeals the circuit court's dismissal of his postconviction petition following denial of his motion to withdraw the petition. He argues the court abused its discretion in denying his motion to withdraw. We affirm.[1]

[1]In 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.

¶ 3 Thomas was convicted of armed robbery after a jury trial. Because prior convictions subjected him to the habitual criminal statute (720 ILCS 5/33B-1 (West 2006)), Thomas was sentenced to a mandatory term of natural life imprisonment.

¶ 4 Before his trial, Thomas indicated he would assert an alibi defense. He identified two witnesses, Vickie Neustradter and Amanda Warren, he might call to testify. Thomas later amended his answer, withdrawing the alibi defense.

¶ 5 This court affirmed Thomas's conviction. *People v. Thomas*, 2011 IL App (1st) 082955-U. In 2012, Thomas filed a *pro se* postconviction petition asserting numerous claims. Among them, Thomas alleged he was actually innocent and that his trial counsel was ineffective for withdrawing and failing to present his alibi defense. He claimed that he was in police custody at the time of the robbery. And when he was released, a detective allowed Thomas to use his cell phone to call Neustradter to arrange for transportation. No affidavits or supporting documents were attached to the petition. The petition was docketed for second stage proceedings and counsel was appointed. Thomas later elected to continue acting *pro se* and requested discovery of materials, notably his trial counsel's file, to support his ineffective assistance claim. The trial court denied Thomas's request for discovery and granted the State's motion to dismiss. We vacated the dismissal of Thomas's petition upon our finding that he was entitled to discover his trial counsel's file and remanded for new second stage proceedings. *People v. Thomas*, 2021 IL App (1st) 152600-U.

¶ 6 On remand, Thomas chose to continue representing himself. The Public Defender's Office searched for but could not locate trial counsel's file. Thomas filed an amended petition, reasserting his original petition's claims and adding a claim that his appellate counsel was ineffective for failing to argue trial counsel's ineffectiveness for abandoning his alibi defense. As with his initial petition, no affidavits or supporting documents were attached.

¶ 7 The State filed a motion to dismiss. The trial court granted the motion, dismissing all claims apart from Thomas's claims of actual innocence and ineffective assistance of trial counsel related to the withdrawn alibi defense.

¶ 8 The petition was scheduled for a July 12, 2023, third stage evidentiary hearing on the remaining claims. On that date, Thomas requested a continuance, explaining that he recently received a letter from a law firm about serving as his "co-counsel." The court informed Thomas that he could be represented by counsel or represent himself, but not both. The court granted a continuance. At four subsequent appearances, Thomas appeared by himself and repeated that he was communicating with the law firm about arranging their representation. Additional continuances were granted.

¶ 9 In December 2023, Thomas informed the court he was "just going to finish it up by [him]self." The court asked if the parties were prepared to schedule the evidentiary hearing. Thomas requested assistance with issuing subpoenas for witnesses, including two of the robbery victims. The State indicated it did not have current addresses for the robbery victims. The court asked the State to provide Thomas with the information it had, but explained to Thomas that the State was not required to ascertain the robbery victims' current whereabouts.

¶ 10 An evidentiary hearing was scheduled for March 18, 2024. Rather than going forward, Thomas requested the court to stay the proceedings. He stated that members of the State's Attorney's Criminal Review Unit (CRU)[2] had spoken with him at the prison in Stateville and told him they were already investigating his case. The CRU provided Thomas with an application, which he submitted. He received a letter in response, which he provided to the court, explaining

[2]As appellate counsel notes, the Cook County State's Attorney's Office has maintained a Conviction Integrity Unit (CIU) to examine past convictions. It is unclear if Thomas meant to refer to the CIU or if the State's Attorney changed the unit's name.

the CRU would not examine a case with pending postconviction proceedings. The letter further stated that Thomas's case would have to be either stayed or dismissed for the CRU to examine his case. The court informed Thomas his choices were to either (1) proceed to a hearing that day, (2) continue the hearing once more, or (3) withdraw his petition. Thomas reasserted that he wanted his petition stayed to allow the CRU to examine his case. The court denied the request for a stay and continued the matter for an evidentiary hearing on May 10, 2024.

¶ 11 On May 10, 2024, Thomas filed a written motion to withdraw his petition without prejudice. In the motion, Thomas explained that he filed it due to the court's denial of his request for a stay. He wanted the CRU to examine his case but also wanted to retain the ability to present his postconviction claims if he did not obtain relief through the CRU investigation. The State objected, arguing that the matter had been scheduled for an evidentiary hearing several times and, each time, no witnesses were present to testify in support of Thomas's claims.

¶ 12 The court denied Thomas's motion, stating:

> "I'm going to respectfully deny *** Your request that I dismiss this without prejudice. I don't know that the Post-Conviction Hearing Act would authorize that in any event. But even if it does, this is a 2006 case pending now for almost 20 years."

The court further explained that the matter had been scheduled for an evidentiary hearing multiple times and it had afforded Thomas several continuances to prepare. The court then asked Thomas if he was prepared to proceed with the hearing. Thomas answered "no" and reiterated his request to withdraw his petition. With the request denied and Thomas failing to proceed, the court dismissed his petition. We allowed Thomas's motion for leave to file a late notice of appeal.

¶ 13 On appeal, Thomas argues the trial court abused its discretion in denying his motion to withdraw his petition.

¶ 14 The Post-Conviction Hearing Act (Act) (725 ILCS 5/122-1 *et seq*. (West 2024)) provides a mechanism for an incarcerated person to assert that a substantial denial of constitutional rights occurred in the proceedings that resulted in their conviction. *People v. Guerrero*, 2012 IL 112020, ¶ 14. A petition filed under the Act is not an appeal but a collateral action to raise issues that were not and could not have been raised on direct appeal. *People v. Clark*, 2023 IL 127273, ¶ 38.

¶ 15 The Act contemplates three stages. *People v. Johnson*, 2021 IL 125738, ¶ 24. The last of which is an evidentiary hearing, where the defendant bears the burden to make a substantial showing of a constitutional violation. *People v. Pendleton*, 223 Ill. 2d 458, 473 (2006).

¶ 16 Though related to a criminal matter, postconviction proceedings are considered civil in nature. *People v. Bailey*, 2017 IL 121450, ¶ 29. Therefore, general civil practice rules and procedures apply to the extent they do not conflict with the Act. *Id*.

¶ 17 Under the Code of Civil Procedure (Code) (735 ILCS 5/2-101 *et seq*. (West 2024)), a plaintiff has an unfettered right to voluntarily dismiss their claims without prejudice " 'at any time before trial or hearing begins.' " *Morrison v. Wagner*, 191 Ill. 2d 162, 165 (2000) (quoting 735 ILCS 2-1009(b) (West 2024)). And the general savings clause provided in section 13-217 of the Code (735 ILCS 5/13-217 (West 2024)) allows a plaintiff to refile the claims within one year. *Hudson v. City of Chicago*, 228 Ill. 2d 462, 483 (2008).

¶ 18 A postconviction petitioner's voluntary withdrawal is considered a voluntary dismissal without prejudice. *People v. Simms*, 2018 IL 122378, ¶ 44. And, pursuant to section 13-217, the petitioner may refile their petition within one year and have it treated as an original filing. *People v. Hunt*, 2022 IL App (4th) 210001, ¶ 21. But unlike a civil plaintiff's unfettered right to voluntary dismissal, a postconviction petitioner must obtain leave of court to withdraw their petition. Section 122-5 of the Act (725 ILCS 5/122-5 (West 2018)) states the trial court "may in its discretion grant

leave, at any stage of the proceeding prior to entry of judgment, to withdraw the petition." Accordingly, we review the denial of a motion to withdraw a postconviction petition for an abuse of discretion. *People v. Chester*, 2014 IL App (4th) 120564, ¶ 26. "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." *People v. Vesey*, 2026 IL 130919, ¶ 52.

¶ 19 Thomas contends the trial court denial of his motion to withdraw cannot be upheld. Since it incorrectly remarked that the Act did not permit a petitioner to withdraw their petition without prejudice, Thomas argues the court's decision is either a mistake of law or failure to exercise discretion. In addition, Thomas contends the court's observation that the petition had been pending for many years was an improper basis to deny his motion, since much of the delay was not attributable to him. He asserts that the delay was mostly attributable to his prior appeal, and once that issue was resolved, he was unable to proceed since the State failed to provide him information to subpoena two of the robbery victims. Thomas also asserts that the court's denial of his motion prejudiced him because he was unable to preserve his claims while the CRU investigated his case.

¶ 20 Contrary to his contentions, the denial of Thomas's motion to withdraw did not result from a misapprehension of law or the court's failure to exercise discretion. Rather, the court explicitly stated it would deny the motion in its discretion and provided its reasons for doing so.

¶ 21 Further, the trial court's concern for the lengthy delay in resolving Thomas's petition was reasonable. There is an interest in the finality of criminal litigation. *People v. Flores*, 153 Ill. 2d 264, 274 (1992). The petition was pending for over a decade. While Thomas's prior appeal accounted for much of that time, Thomas sought to delay an evidentiary hearing at every opportunity. The trial court accommodated him multiple times, granting him continuances to address the matters that Thomas represented as preventing him from going forward. Thomas also

faults the State for failing to provide information so he could subpoena two of the robbery victims, but those individuals were irrelevant to Thomas's pending claims. The evidentiary hearing was limited to Thomas's ineffective assistance and actual innocence claims premised on an alibi. According to Thomas's amended petition, the only relevant witnesses were the detective and Neustradter. Thomas wanted to subpoena the robbery victims to support his claim that they committed perjury, but the court had dismissed his perjury claim at the second stage. Thus, contrary to his assertions, this demonstrates Thomas's effort to delay the proceedings by seeking to subpoena witnesses for a dismissed claim. Ultimately, Thomas had several opportunities to present his claims and failed to do so.

¶ 22 We also reject the claim that the court's denial of the motion to withdraw resulted in prejudice. Contrary to Thomas's representations to the trial court, he failed to corroborate that the CRU was in fact reviewing his conviction or intended to. The sole evidence he provided was a letter merely explaining that the CRU would not examine his case when he had a pending postconviction petition. Any convicted person could request the CRU to review their conviction, and the CRU is not obligated to fulfill such requests. In addition, it does not appear that Thomas cannot still request CRU investigation now that his postconviction proceedings have concluded. The State's Attorney can examine past convictions at any time. It was not necessary for a CRU investigation to precede resolution of Thomas's postconviction petition. Ultimately, these circumstances did not compel the trial court to grant Thomas's motion to withdraw his petition.

¶ 23 We further observe that Thomas never produced an affidavit or other evidence from the purported alibi witnesses. Accordingly, he failed to establish that his ineffective assistance of trial counsel claim was " 'capable of objective or independent corroboration.' " *People v. Allen*, 2015 IL 113135, ¶ 32 (quoting *People v. Collins*, 202 Ill. 2d 59, 67 (2002)). In addition, Thomas relied

on the same purported evidence in his ineffective assistance claim to claim actual innocence. He failed to present newly discovered evidence, as required. See *People v. Ortiz*, 235 Ill. 2d 319, 333 (2009) (evidence to support a claim of actual innocence must be newly discovered). The same evidence may not be used to support both a freestanding claim of actual innocence and a claim of constitutional trial error. *People v. Hobley*, 182 Ill. 2d 404, 443-44 (1998).

¶ 24 For these reasons, we find the circuit court did not abuse its discretion in denying Thomas's motion to withdraw his postconviction petition and we affirm the judgment dismissing the petition.

¶ 25 Affirmed.