FIRST DISTRICT
SECOND DIVISION
November 10, 2026

No. 1-22-1182

THE PEOPLE OF THE STATE OF ILLINOIS,	)	Appeal from the
	)	Circuit Court of
Plaintiff-Appellee,	)	Cook County.
	)	
v.	)	No. 17 CR 02187
	)	
BRIAN LEHNERT,	)	Honorable
	)	Ramon Ocasio, III,
Defendant-Appellant.	)	Judge, Presiding.

PRESIDING JUSTICE D.B. WALKER delivered the judgment of the court, with opinion.
Justices McBride and Van Tine concurred in the judgment and opinion.

OPINION

¶ 1 Defendant Brian Lehnert appeals from the trial court's judgment dismissing his petition at the second stage of proceedings under the Post-Conviction Hearing Act (Act) (725 ILCS 5/122-1 *et seq.* (West 2022)). On appeal, defendant contends that his petition should have proceeded to a third-stage evidentiary hearing where it made a substantial showing that (1) the trial court improperly denied his timely filed motion to withdraw his guilty plea, (2) his guilty plea was not voluntary, and (3) he was actually innocent based on the affidavits of two witnesses. For the following reasons, we affirm the dismissal of defendant's involuntary plea claim but reverse the dismissal of his actual innocence claim and remand for further proceedings.[1]

[1]This case was recently reassigned to this panel due to the illness of the original authoring justice.

¶ 2 I. BACKGROUND

¶ 3 On February 7, 2017, a grand jury indictment charged defendant with eight counts of attempted first degree murder as to complainants Michael Kessler and Jonathan Vazquez, two counts of aggravated battery with the discharge of a firearm, two counts of aggravated discharge of a firearm, two counts of unlawful use or possession of a weapon by a felon, four counts of aggravated unlawful use of a weapon, and two counts of aggravated fleeing and eluding. Defendant's charges stemmed from a shooting incident that occurred on January 13, 2017, outside of O'Donnell's Bar in Franklin Park, Illinois.

¶ 4 During pretrial proceedings, defendant's private counsel filed an answer indicating that defendant would claim self-defense. On July 24, 2018, defendant filed a demand for a speedy trial, and trial was set for September 4, 2018.

¶ 5 On September 4, 2018, prior to trial, the trial court informed defendant of the potential sentences he faced if found guilty of the charges. The court explained that, because defendant was alleged to have discharged a firearm, the 25-year firearm enhancement applied and he was subject to a minimum sentence of 31 years for attempted murder. Since there were two victims, defendant faced a minimum sentence of 62 years on the attempted murder charges, and he would "have to serve 85 percent of the time." On the aggravated discharge counts, the sentencing range for two victims was 12 to 60 years in prison. Defendant stated that he understood.

¶ 6 The State informed the court that defendant had been offered a sentence of 10 years. It wanted the record to reflect that the offer was extended to him, he understood the offer, and he rejected it. The State also informed the court that it would file motions to admit other-crimes and gang evidence. Before proceeding further, defense counsel requested "5 minutes," and the case was passed.

¶ 7 When the case returned before the trial court, the following exchange occurred:

"THE COURT: It is my understanding that you (defendant) and your attorney were able to negotiate a plea agreement on your behalf in exchange for you pleading guilty to the offense of aggravated battery with a firearm; Count 9. All other remaining counts are going to be dismissed, which makes it 23 counts. Do you understand that?

THE DEFENDANT: Yes, sir.

THE COURT: Okay. You understand you are pleading guilty to a Class X felony, which is non-probationable [*sic*]. Carries a range of penalties *** from 6 to 30 years. Along with 3 years of Mandatory Supervisory Release, also known as parole. That's the range for possible penalties. Do you understand that?

DEFENDANT: Yes, sir.

THE COURT: Do you understand that you don't have to plead guilty. You could plead not guilty and ask for a jury trial or a bench trial. You do have that option. Do you understand that?

DEFENDANT: Yes, sir.

THE COURT: Did anyone force you or threaten you to give up those rights?

DEFENDANT: I was kind of pressured, but—

THE COURT: Pardon me? Well, decisions have to be made in life. And when you make a decision sometimes you feel pressure. But is it your decision to plead guilty to an aggravated battery for a firearm in exchange for the offer extended by the State?

DEFENDANT: Yes, sir.

THE COURT: I'm going to listen for a factual basis. All we have to do is listen now while the State tells me what they anticipate the State's witnesses to testify to if called to testify in this matter."

¶ 8 The State provided that, if the case proceeded to trial, "the evidence would show that on January 13th, 2017, at approximately 10:58 in the evening, this defendant, while armed with a firearm in the area of 9573 Franklin Avenue in Franklin Park, Cook County, Illinois, shot the victim in this case, Michael Kessler, about the body with a firearm" and the victim suffered an injury. Defense counsel stipulated to the factual basis. The trial court found that a factual basis existed to sustain defendant's guilty plea. The State put in the record that "the victims are in court [and] *** are in agreement on this count to this time in IDOC."

¶ 9 The trial court followed the recommendation and sentenced defendant to 10 years in the Department of Corrections. Defendant would be credited 600 days for time he had already served. The trial court then admonished defendant that he could file a motion to withdraw his guilty plea within 30 days. If the court allowed the withdrawal, the matter would be set for trial. If the court denied the motion, defendant could appeal the decision. Defendant stated that he understood.

¶ 10 The court then asked defendant if he had anything to say, and the following occurred:

"DEFENDANT: Your Honor, on the day in question, I was at a bar—

THE COURT: Hang on one second. If you are going to describe or provide me a narrative of the facts of the case—basically, what I heard was what the State [would] anticipate their witnesses were saying if called to testify.

Now, if you want to express some regret or remorse and say I wish I had done things differently that night, then that might be appropriate. What do you think, Counsel?

DEFENSE COUNSEL: That would be fine. I don't want him to say—

THE COURT: Feel free to interrupt him.

DEFENDANT: I would like to apologize to Michael Kessler, if he is here, for accidentally shooting him in the leg during—defending myself from assailants. And I believe that—

THE COURT: Well, let me put it this way; if you point a gun at someone, and you pull the trigger, even if you believe the circumstances may have been warranted, your judgment may or may not be justified.

Do you want to persist in your plea of guilty to this offense and accept the offer that's been extended by the State, or do you want to put your—

DEFENDANT: Yes. I will accept the offer."

¶ 11 In a letter to Circuit Court Clerk Dorothy Brown, dated October 4, 2018, defendant stated that he wished to withdraw his guilty plea because it was "forced" and not voluntary and "the charge does not justify the nature of the crime." He stated that he placed the motion, letter, an affidavit, proof of service, and a verification statement in the mail at Shawnee Correctional Center on October 4, 2018. The envelope was addressed to Dorothy Brown at "50 W. Washington, Room #1001, Chicago, Illinois 60602." The postmark on the envelope indicated "6 Oct 2018." The envelope was file-stamped by the circuit court clerk on October 11, 2018.

¶ 12 On November 6, 2018, the trial court denied defendant's motion to withdraw his guilty plea. The court found that, because the envelope was stamped on October 6, 2018, the motion was untimely. The court clerk sent a notification of the court's decision to defendant on November 16, 2018. Defendant did not file a notice of appeal.

¶ 13 On February 14, 2019, defendant filed a *pro se* postconviction petition. Therein, he alleged that his plea "was involuntary as a result of ineffective assistance of counsel." He alleged that his

attorney used his family and friends, as well as "threats and intimidation," to coerce him into pleading guilty. He claimed that he was "innocent of aggravated battery with a firearm" where he "accidentally and unintentionally" injured someone while defending himself from eight assailants. Defendant asserted that he did not receive notice that the trial court denied his motion to withdraw his guilty plea until December 7, 2019.

¶ 14 The trial court docketed the petition for second-stage proceedings and appointed counsel for defendant. Counsel filed a supplemental petition adding that defendant's motion to withdraw his guilty plea was timely because defendant had verified that he placed the motion in the mail on October 4, 2018. Exhibits attached to the supplemental petition included (1) a letter to Circuit Court Clerk Dorothy Brown, dated by defendant on October 4, 2018, with a file stamp indicating receipt by the clerk on October 24, 2018, (2) the notarized affidavits of defendant and four witnesses supporting his claim that he was coerced into pleading guilty by his plea counsel, and (3) a portion of the transcript showing defendant stating to the court that he "was kind of pressured" when he pleaded guilty. Appointed counsel filed a Rule 651(c) certificate on November 8, 2019. Ill. S. Ct. R. 651 (c) (eff. July 1, 2017).

¶ 15 In his affidavit, defendant stated that trial counsel manipulated his family and friends to convince him to plead guilty. He contended that the private investigator did not do anything and that the complainants wanted to make statements to the investigator but did not have the opportunity to do so. He stated that trial counsel did not subpoena any of his witnesses before forcing him to plead guilty. Defendant alleged that his codefendant, Gerardo Martinez, "was set to testify on [defendant's] behalf, but the State made a deal with him, that he could not testify on my behalf (not against me) giving him 3 yrs."

¶ 16 Defendant further averred that "[nine] people pursued me at the bar with a gun" and the attack was "premeditated." He stated that three guys went into the bar to find defendant and they brought him outside where "[six] more guys waited in ambush." Defendant stated that he was "brutally assaulted" by eight people and he feared for his life. He "had no choice but to defend [himself.]" Defendant stated that, on the day scheduled for trial, his girlfriend "based on the scare tactics of [defense counsel] was crying and begging" defendant to "take the deal." Defendant alleged that counsel created "an atmosphere of pressure and duress and hopelessness" that ultimately forced him into making the plea.

¶ 17 Defendant attached affidavits from his friends, Brittany Arteaga and Rocio V. Garza, and his parents. Arteaga and Garza stated that they saw counsel tell defendant that taking the plea was in his best interests "or he would be serving sixty years in prison." Arteaga stated that defendant did not want to take the offer and then she saw counsel approach defendant's family and friends with "scare tactics." According to Arteaga, counsel caused defendant's girlfriend, who was crying, to beg defendant in court to accept the plea deal. Defendant's mother, Lynn Cihak, stated that counsel showed no interest in taking the case to trial and told defendant he was facing at least 30 to 40 years in prison if he did not take the deal. Defendant's father, Eugene Lehnert, stated that counsel told him and defendant's girlfriend that defendant should take the plea. He stated that, "[w]ith all [the] years the prosecution was trying to hit him up with, knowing [defendant] wanted to fight it, myself, not knowing any better, I just told him that's a lot of years."

¶ 18 Defendant subsequently hired private counsel. On January 8, 2021, new counsel filed an "amended motion for post-conviction relief" that realleged all of defendant's previous claims and added a claim of actual innocence. The amended petition alleged that there was newly discovered evidence of actual innocence based on the attached notarized affidavits of codefendant Martinez

and witness Brenton Robinson. The affidavits supported that, when he left the bar, defendant was "surrounded by many individuals who were armed and who had predetermined and preconceived plans to kill or severely injure [defendant]." The planned ambush resulted from an argument that occurred earlier in the evening. In the amended petition, defendant alleged that, had he known about these witnesses, he "would not have pled guilty" and would have maintained he acted in self-defense. The petition further alleged that defendant received two phone calls while in prison and the calls were recorded. In the calls, the witnesses "vividly described the [defendant] being surrounded by a mob of rival gang members outside the bar where the shooting took place." The petition did not identify these witnesses.

¶ 19 In his affidavit dated September 28, 2020, Martinez stated that on January 13, 2017, he and defendant were members of the Imperial Gangsters. On that day, Budda, another member of the gang, rented a room at a Motel 6 in Schiller Park. Other gang members joined Budda, including defendant and Martinez. Everyone was "having a good time and getting drunk" until a person known as "No Love" "took and put on [defendant's] hoodie without asking him." Defendant "was angry because No Love had not asked him so they started to argue and [defendant] pushed No Love." Martinez and others tried to stop the fighting when a person known as "Static" hit defendant from behind. Defendant and Static began fighting, and others "broke it up." Budda told everyone to get out of the room. Once outside, defendant and Static began fighting again. After the fight broke up, defendant "left in his car and the rest *** returned to the motel room."

¶ 20 Static stated that he wanted to "f*** [defendant] up." Martinez tried to protect defendant from Static. Two of Static's friends came to the motel room. Although they were all in the Imperial Gangsters, Static and his friends were "from a different sect." One of Static's friends had a gun.

Martinez stated that he tried again to calm Static, but Static said, "f*** no. I want to kill that mother f***."

¶ 21 The group left the motel and stopped at a gas station. Static said that he received a message that defendant "was at a bar in Franklin Park and that he may have a gun." Static's two friends responded, "No problem, we got our s*** too." Martinez understood that to mean Static's friends "also had guns with them." When they arrived at the bar, Martinez saw defendant walking out the door. He did not have a chance to warn defendant before a group of people surrounded defendant. Martinez saw Static walk around the group to get behind defendant. Static hit defendant in the back of the head, and he "immediately fell to the ground." Static and the others began hitting him. It was a bad beating, and Martinez heard someone yell, "shoot him." At that point, defendant fired his weapon. Everyone began to run, and someone dropped a weapon on the ground. Martinez picked it up, but then he "put the gun on top of a tire of a parked car because [he] did not want to be caught with a gun." After the police found Martinez, he told them that he did not see who was shooting "because I knew that I should be quiet because I was also arrested."

¶ 22 Martinez stated that he is no longer a gang member. He reiterated that defendant "had to do what he did because he was down on the ground being stomped and beaten and that he shot only to defend himself after hearing someone yelling, 'shoot, shoot him.' "

¶ 23 In his affidavit, Robinson stated that he joined the Imperial Gangsters when he was 23 years old. He "met them hanging at the bars." Robinson stated that he was at O'Donnell's when defendant "got jumped outside." Robinson "didn't know why," but he saw defendant surrounded by several people Robinson recognized as "other IGs." They beat defendant "while he was curled up on the ground." Robinson stated that he saw "two guys with guns." Robinson "heard shots and Mike fell." He told police that he saw defendant shooting but that "he had to do it in self-defense."

Robinson stated that he saw 20 other people with guns but "did not want to name them in fear of [a] violation."

¶ 24 On October 1, 2021, the State filed a motion to dismiss defendant's petition. In the motion, the State argued that defendant forfeited review of the decision to deny his motion to withdraw his guilty plea because he did not appeal the judgment. The State also argued that defendant failed to make a substantial showing that trial counsel coerced him into pleading guilty or that defendant was prejudiced by counsel's actions. Regarding defendant's actual innocence claim, the State argued that Robinson's and Martinez's affidavits did not qualify as new evidence and that neither witness provided sufficient evidence to support that defendant fired in self-defense. Defendant's counsel did not file a reply to the State's motion.

¶ 25 A hearing was held on the motion without defendant present. At the hearing, the State noticed that defendant's private counsel had not filed a Rule 651(c) certificate. Counsel responded that he had filed a certificate but he would refile the certificate before the court's ruling. A certificate was filed that morning. After the hearing, the trial court granted the State's motion to dismiss. Defendant now appeals.

¶ 26 II. ANALYSIS

¶ 27 The Act is a "legislative creation" that allows an incarcerated defendant to assert a substantial violation of his constitutional rights regarding his conviction and sentencing. *People v. Bailey*, 2017 IL 121450, ¶ 17. A postconviction proceeding is not a substitute for a direct appeal but instead "offers a mechanism for a criminal defendant to assert a collateral attack on a final judgment." *People v. Robinson*, 2020 IL 123849, ¶ 42. "The purpose of a postconviction proceeding is to permit inquiry into constitutional issues involved in the original conviction and sentence that were not, and could not have been, adjudicated previously on direct appeal." *People*

v. English, 2013 IL 112890, ¶ 22. Therefore, issues raised and decided on direct appeal or in a prior proceeding are barred as *res judicata*, and issues that could have been raised, but were not, are forfeited. *People v. Daniels*, 2020 IL App (1st) 171738, ¶ 21.

¶ 28 Proceedings under the Act are divided into three stages. *People v. Gaultney*, 174 Ill. 2d 410, 418 (1996). At the first stage, the trial court may dismiss a postconviction petition that is "frivolous or *** patently without merit." 725 ILCS 5/122-2.1(a)(2) (West 2022). If the trial court does not dismiss the petition, it advances to the second stage, where the court may appoint counsel to represent the defendant. *Id.* § 122-2.1(b); *Bailey*, 2017 IL 121450, ¶ 18.

¶ 29 Here, defendant's postconviction petition was dismissed at the second stage. At the second stage, the defendant must make a substantial showing of a constitutional violation. *People v. Domagala*, 2013 IL 113688, ¶ 33. Such a showing is made when the petition's well-pleaded allegations, if proven at an evidentiary hearing, would entitle the defendant to relief. *Id.* ¶ 35. The trial court does not engage in factfinding or credibility determinations at this stage; rather, all well-pleaded facts not positively rebutted by the original trial record are taken as true. *Id.* If the petition fails to make a substantial showing of a constitutional violation, it is dismissed. *People v. Edwards*, 197 Ill. 2d 239, 246 (2001). We review the trial court's dismissal at the second stage *de novo*. *People v. Pendleton*, 223 Ill. 2d 458, 473 (2006).

¶ 30 A. *Motion to Withdraw Guilty Plea*

¶ 31 Defendant first contends that he made a substantial showing of a constitutional violation where he alleged that the trial court improperly denied his motion to withdraw his guilty plea. He contends that filing a motion to withdraw is akin to appealing his conviction. He argues that his motion was timely and thus the improper denial violated his constitutional right to appeal his conviction. As support, he cites *People v. Abdullah*, 2019 IL 123492.

¶ 32 *Abullah*, however, concerned the defendant's direct appeal of his conviction after a jury trial. *Id.* ¶ 3. In contrast, defendant here pleaded guilty after negotiations with the State. "Fundamentally, plea agreements are contracts, and principles of waiver apply equally to them." *People v. Jones*, 2021 IL 126432, ¶ 21. It is well established that, when a defendant enters a plea agreement, he or she "waives all non-jurisdictional errors or irregularities, including constitutional ones." (Emphasis and internal quotation marks omitted.) *Id.* ¶ 20. Accordingly, leave to withdraw a guilty plea is not granted as a matter of right. *People v. Hillenbrand*, 121 Ill. 2d 537, 545 (1988).

¶ 33 While a defendant does waive certain constitutional rights when pleading guilty, the waiver must be a voluntary, knowing, and intelligent act "done with sufficient awareness of the relevant circumstances and likely consequences." (Internal quotation marks omitted.) *People v. Stroud*, 208 Ill. 2d 398, 403 (2004). In other words, a defendant does not waive his contention that the plea itself was involuntary when he pleads guilty. *Id.* Therefore, he may challenge the constitutionality of his plea either by claiming that he did not receive the benefit of the bargain or by alleging that his plea was not made voluntarily or with full knowledge of the consequences. *People v. Manning*, 227 Ill. 2d 403, 412 (2008).

¶ 34 Moreover, our supreme court has determined that a defendant may raise an involuntary plea issue for the first time in a postconviction petition, even if he did not first move to withdraw his plea or file a direct appeal. See *Stroud*, 208 Ill. 2d at 402-03; see also *People v. Hall*, 217 Ill. 2d 324, 328 (2005) (the court addressed petitioner's postconviction claim that his guilty plea was involuntary even though he had withdrawn his motion to withdraw his guilty plea and he did not file a direct appeal). Defendant in this case alleged that his plea was involuntary, and the involuntary nature of his plea was the basis for his motion to withdraw his plea. We therefore find it unnecessary to consider defendant's contention that his motion to withdraw his guilty plea was

timely filed pursuant to the mailbox rule. Instead, for purposes of reviewing the dismissal of defendant's postconviction petition, we directly address his constitutional claim that his guilty plea was involuntary.

¶ 35 B. *Voluntariness of Guilty Plea*

¶ 36 In his petition, defendant alleged that trial counsel provided ineffective assistance by unduly coercing him to plead guilty when he had a viable self-defense claim. When a defendant challenges his guilty plea by alleging ineffective assistance of counsel, he must establish that counsel's performance fell below an objective standard of reasonableness and he was prejudiced by counsel's deficient performance. *Hall*, 217 Ill. 2d at 334-35. Counsel's conduct is unreasonable if counsel failed to ensure that defendant's plea was entered voluntarily and knowingly. *Id.* at 335.

¶ 37 To support his claim, defendant attached the affidavits of friends and family who stated that counsel pressed defendant to take the plea deal. While the affidavits confirmed that defendant felt pressure under the circumstances, they do not contradict evidence in the record showing that defendant's plea was knowingly and voluntarily entered in the face of that pressure.

¶ 38 Before accepting his plea, the trial court informed defendant that he did not have to plead guilty and instead he "could plead not guilty and ask for a jury trial or a bench trial." The court told defendant, "[y]ou do have that option. Do you understand that?" Defendant answered, "Yes, sir." The court then asked defendant whether anyone forced or threatened him to "give up those rights." Defendant answered that he "was kind of pressured, but—." The court acknowledged that defendant would feel pressure in this situation but asked defendant, "is it your decision to plead guilty to an aggravated battery for a firearm in exchange for the offer extended by the State?" He answered, "Yes, sir."

¶ 39 After the trial court heard the factual basis for defendant's plea, it gave him an opportunity to speak. When defendant began to talk about the facts of the case, the court stopped him and explained that an expression of remorse or an apology would be more appropriate. Defendant stated, "I would like to apologize to Michael Kessler, if he is here, for accidentally shooting him in the leg during—defending myself from assailants. And I believe that—." The court interrupted him, explaining that, even if defendant believed he was properly defending himself by shooting his weapon, "your judgment may or may not be justified." The court asked defendant, "Do you want to persist in your plea of guilty to this offense and accept the offer that's been extended by the State, or do you want to put your—." Before the court could finish the sentence, defendant answered, "Yes. I will accept the offer."

¶ 40 Defendant claims that defense counsel coerced him into pleading guilty instead of going to trial. However, the record shows that, when the trial court asked whether he understood that by pleading guilty he was giving up his right to a trial, defendant answered, "Yes, sir." Also, defendant had an opportunity to raise the same concerns he alleged in his petition during the plea proceedings. First, he told the court of the pressure he felt in deciding whether to plead guilty. Second, he expressed his belief that he was defending himself when Kessler was shot. Each time, the trial court acknowledged defendant's remarks but then asked whether it was still his decision to plead guilty. Each time, knowing that his case would go to trial if he did not plead guilty, defendant chose to accept the State's offer. The record thus contradicts defendant's claim that he did not knowingly and voluntarily plead guilty. See *People v. Jones*, 144 Ill. 2d 242, 263 (1991) (finding the record contradicted the defendant's claim that he was improperly pressured into pleading guilty by counsel's assurance that he would not receive the death penalty, where the court questioned the defendant to determine whether any promises were made and whether he understood that he could

receive the death penalty, and he "reiterated his desire to plead guilty"). We find that defendant's petition has not set forth a substantial violation of a constitutional right regarding his guilty plea.

¶ 41 C. *Actual Innocence*

¶ 42 Defendant next contends that his petition made a substantial showing of actual innocence. Although defendant pleaded guilty below, he may assert an actual innocence claim in a postconviction petition. *People v. Reed*, 2020 IL 124940, ¶ 41. Our supreme court recognized, however, that the guilty plea prevented the State from presenting all of its evidence against the defendant, "leaving only defendant's admission of guilt and stipulation of the factual basis of the plea." *Id.* ¶ 45. The court also emphasized that pleading guilty "is a grave act that is not reversible at the defendant's whim." *Id.* ¶ 47. As a result, the standard for a successful actual innocence claim should be more stringent for defendants who plead guilty. *Id.* ¶ 48. The court found that, to succeed on a claim of actual innocence, such defendants must provide "new, material, noncumulative evidence that clearly and convincingly demonstrates that a trial would probably result in acquittal." *Id.* ¶ 49. Citing *Reed*, the State argues that this clear and convincing standard applies here and we should assess defendant's actual innocence claim accordingly.

¶ 43 We disagree. In *People v. Griffin*, 2024 IL 128587, ¶ 38, our supreme court clarified that *Reed* addressed the proper standard for a determination at a *third-stage* evidentiary hearing. The court found that *Reed* did not address the applicable standard for assessing a guilty-plea defendant's actual innocence claim at the leave-to-file stage. *Id.* It reasoned that, at the first stage, the circuit court may only determine whether the defendant has satisfied the applicable test to enable him to file his petition. *Id.* ¶ 40. However, in order to conform to the clear and convincing standard, the court must make credibility and reliability determinations regarding the evidence. *Id.* Under standard first-stage proceedings, the court cannot make such determinations. Our supreme

court found that holding guilty-plea defendants to the higher clear and convincing standard at the first stage "would create a confusing patchwork of rules." *Id.*

¶ 44 It therefore held that "the same standard applies at the leave-to-file stage regardless of whether the [defendant] pleaded guilty or was convicted at trial." *Id.* ¶ 38. As such, the relevant inquiry is whether the defendant's new evidence, taken as true unless positively rebutted by the record, could lead to acquittal on retrial. *Id.* ¶ 40. If the petition ultimately advances to a third-stage evidentiary hearing, the new evidence will then be tested using the higher clear and convincing standard applicable to a guilty-plea defendant's claims. *Id.* ¶ 39.

¶ 45 Although *Griffin* addressed the proper standard at the first stage, we find that its reasoning applies to second-stage petitions as well. At the second stage, like the first stage, all well-pleaded facts that are not positively rebutted by the record are taken as true for purposes of the State's motion to dismiss. *Domagala*, 2013 IL 113688, ¶ 35. Also, dismissal of a petition at the second stage is warranted only when its factual allegations fail to make a substantial showing of a constitutional violation. *People v. Coleman*, 183 Ill. 2d 366, 382 (1998). This inquiry does not require the circuit court to engage in factfinding or credibility determinations. *Domagala*, 2013 IL 113688, ¶ 35. At the second stage, the circuit court determines only whether the allegations in the petition, liberally construed in favor of defendant and taken as true, are sufficient to entitle defendant to relief under the Act. *People v. Sanders*, 2016 IL 118123, ¶ 31. Therefore, when considering the dismissal of an actual innocence claim at the second stage, we find that the same standard applies regardless of whether the defendant pleaded guilty or was convicted at trial. See *Griffin*, 2024 IL 128587, ¶ 38.

¶ 46 We recognize that, when the State filed its brief, it did not have the benefit of our determination that the "clearly and convincingly" standard does not apply to second-stage

proceedings for defendants who pleaded guilty. We have found no published cases addressing this issue and one unpublished case from the Fourth District that surmised a more stringent standard might apply in light of *Reed*. See *People v. Harris*, 2021 IL App (4th) 200095-U, ¶ 36 (finding that *Reed* would "suggest" that a higher standard of proof applies at the second stage but declining to rule on the issue because the defendant "failed to satisfy even the standard applicable to second stage proceedings following a trial"). We note, however, that *Harris* was filed before our supreme court filed its decision in *Griffin*. Accordingly, although the State's arguments on appeal incorporate the more stringent standard, we will not apply that standard to the evidence at the second stage of postconviction proceedings.

¶ 47 To establish a claim of actual innocence, defendant's 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. *Robinson*, 2020 IL 123849, ¶ 47. The conclusive character of the evidence is the most important element of an actual innocence claim. *People v. Washington*, 171 Ill. 2d 475, 489 (1996). We review the dismissal of defendant's actual innocence claim at the second stage *de novo*. *Sanders*, 2016 IL 118123, ¶ 31.

¶ 48 Newly discovered evidence is evidence discovered after trial that the defendant could not have discovered earlier through the exercise of due diligence. *Robinson*, 2020 IL 123849, ¶ 47. The State argues that the facts supporting defendant's self-defense claim are not new because they were known to him at the time he pleaded guilty. The State also argues that the affidavits of Martinez and Robinson are not newly discovered evidence because Martinez was known to defendant and his counsel and defendant could have discovered Robinson through due diligence.

¶ 49 We agree that defendant could have discovered Robinson earlier. In his affidavit, Robinson stated that he told the police defendant was the shooter but "he had to do it in self-defense." As

such, he was a known witness to the attack that defendant could have discovered at the time he pleaded guilty. Robinson also did not state that he would have refused to testify on defendant's behalf. Although he did not want to name the attackers, his testimony could have supported defendant's position that he shot in self-defense. Therefore, we find that Robinson's affidavit does not constitute newly discovered evidence in support of defendant's actual innocence claim.

¶ 50 The mere fact that defendant knew he fired his weapon in self-defense does not mean evidence supporting his claim was not newly discovered. As this court has noted, an innocent defendant obviously knows that he is innocent of the charge. Thus, "[i]t is evidence tending to prove that fact, and not the fact itself, that can form the basis for a postconviction claim of actual innocence." *People v. Wilson*, 2025 IL App (1st) 230027, ¶ 46. Here, there is no indication in the record that defendant knew the group intended to attack him while armed with firearms. Although defendant knew that a group of people surrounded him and beat him, he did not know that the attack was premeditated or that one of the attackers, Static, stated he wanted to kill defendant. This information was contained in Martinez's affidavit. Martinez also stated that people in the group had guns on them before the attack. These statements must be taken as true, asS they are not positively rebutted by the record.

¶ 51 Furthermore, Martinez was a codefendant in the case. After the police found Martinez, he told them that he did not see the shooting "because I knew that I should be quiet because I was also arrested." Defendant stated in his affidavit that Martinez made a deal with the State and, as a result, he could not testify on defendant's behalf. It is well established that, where the newly discovered witness is a codefendant with a fifth amendment right to avoid self-incrimination, "[n]o amount of diligence could have forced him to violate that right if he did not choose to do so."

People v. Edwards, 2012 IL 111711, ¶ 38. We find that Martinez's affidavit is newly discovered evidence.

¶ 52 Defendant must also show that Martinez's affidavit is material and not cumulative. *Robinson*, 2020 IL 123849, ¶ 47. Material evidence is relevant and probative of defendant's innocence, and evidence is noncumulative if it adds to the evidence presented below. *People v. Coleman*, 2013 IL 113307, ¶ 96. Here, the State does not argue that Martinez's affidavit was cumulative evidence and not material. Rather, the State focuses on the conclusive character element.

¶ 53 To be of conclusive character, the evidence need not support total vindication or exoneration. *Robinson*, 2020 IL 123849, ¶¶ 55-56. Instead, evidence is of conclusive character if it "places the trial evidence in a different light and undermines the court's confidence in the judgment of guilt." *Id.* ¶ 56. Probability, not certainty, is the key when determining whether the new evidence, considered with the evidence at trial, would lead to a different result. *Id.* ¶ 48.

¶ 54 Defendant argues that Martinez's affidavit is of such conclusive character because his statements strongly corroborate defendant's claim that he fired his gun in self-defense. Acting in self-defense is a justifying circumstance that may serve as the basis of an actual innocence claim. *People v. Woods*, 2020 IL App (1st) 163031, ¶ 41. To establish self-defense, defendant must demonstrate that (1) unlawful force was threatened against him, (2) he was not the initial aggressor, (3) the danger of harm was imminent, (4) the use of force was necessary, (5) he actually and subjectively believed a danger existed that required the use of force, and (6) his beliefs were objectively reasonable. *People v. Gray*, 2017 IL 120958, ¶ 50.

¶ 55 According to Martinez, a group of people, led by Static, was searching for defendant because he had been fighting with Static. Static told Martinez that he wanted to kill defendant.

After hearing that defendant was at a bar in Franklin Park, Static and the group armed themselves and drove to the bar. When defendant left the bar, he was immediately surrounded by Static and his group. Static hit defendant in the back of the head, and defendant "immediately fell to the ground." Others began beating defendant, and Martinez described the beating as "bad." Martinez heard someone yell "shoot him," and that is when defendant fired his weapon. Martinez stated that defendant "had to do what he did because he was down on the ground being stomped and beaten and that he shot only to defend himself after hearing someone yelling, 'shoot, shoot him.' "

¶ 56 The State argues that it is not clear whether anyone in the group actually carried weapons when defendant was being beaten or that defendant was aware anyone possessed a gun. However, it is well established that a physical beating may qualify as conduct that could cause great bodily harm, and the aggressor need not be armed with a weapon to justify one's use of deadly force in self-defense. *People v. Reeves*, 47 Ill. App. 3d 406, 411 (1977). Moreover, Martinez's statements that Static planned the attack and expressed a desire to kill defendant supports that the beating was violent and defendant thus reasonably believed he had to defend himself by firing the gun.

¶ 57 We are mindful that, at the second stage, courts do not engage in factfinding nor make credibility determinations. Instead, "all well-pleaded facts that are not positively rebutted by the original trial record are to be taken as true for purposes of the State's motion to dismiss." *People v. McCoy*, 2026 IL 131565, ¶ 49. With that in mind, this new evidence, considered with the admittedly sparse factual basis given for defendant's plea, certainly presents the plea evidence in a different light and undermines confidence in the judgment of guilt. We find that this new evidence is of such conclusive character to support defendant's claim of actual innocence.

¶ 58 Because defendant has made a substantial showing of a constitutional violation, we reverse the dismissal of his actual innocence claim at the second stage and remand the matter for a third-

stage evidentiary hearing. As defendant pleaded guilty, to succeed on his actual innocence claim at the third stage, he must "provide new, material, noncumulative evidence that clearly and convincingly demonstrates that a trial would probably result in acquittal." *Reed*, 2020 IL 124940, ¶ 49.

¶ 59 D. *Ineffective Assistance of Counsel*

¶ 60 Defendant also argued that postconviction counsel provided ineffective assistance by failing to comply with Rule 651(c). He argued that, pursuant to the rule, counsel had a duty to attach evidence to support the petition's claim of actual innocence. Specifically, the petition alleged that two unnamed eyewitnesses who observed the beating called defendant while he was in prison. Defendant argues that these witnesses would have supported his actual innocence claim and that counsel performed unreasonably by failing to include evidentiary support. As relief, defendant sought remand of the matter for second-stage proceedings to require counsel to provide those materials in response to the State's motion to dismiss.

¶ 61 However, we have reversed the dismissal of defendant's actual innocence claim and determined that it should proceed to a third-stage evidentiary hearing. Therefore, even if postconviction counsel had performed deficiently at the second stage by failing to attach those materials, defendant suffered no prejudice as a result. To prevail on a claim of ineffective assistance of counsel, defendant must show that counsel's performance was deficient and that the deficient performance prejudiced him. *People v. Johnson*, 2021 IL 126291, ¶ 52. The failure to establish either prong precludes a finding of ineffective assistance of counsel. *Id.* ¶ 53.

¶ 62 III. CONCLUSION

¶ 63 For the foregoing reasons, we affirm the trial court's dismissal of defendant's involuntary plea claim and reverse the dismissal of his actual innocence claim. The cause is remanded to the trial court for a third-stage evidentiary hearing on that claim.

¶ 64 Affirmed in part and reversed in part; cause remanded.

***People v. Lehnert*, 2026 IL App (1st) 221182**

Decision Under Review:	Appeal from the Circuit Court of Cook County, No. 17-CR-02187; the Hon. Ramon Ocasio III, Judge, presiding.
Attorneys for Appellant:	James E. Chadd, Douglas R. Hoff, and Samuel B. Steinberg, of State Appellate Defender's Office, of Chicago, for appellant.
Attorneys for Appellee:	Eileen O'Neill Burke, State's Attorney, of Chicago (Enrique Abraham, Brian A. Levitsky, and Adam C. Motz, Assistant State's Attorneys, of counsel), for the People.