

2020 IL App (2d) 200304-U
No. 2-20-0304
Order filed December 10, 2021

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

IN THE
APPELLATE COURT OF ILLINOIS
SECOND DISTRICT

THE PEOPLE OF THE STATE)	Appeal from the Circuit Court
OF ILLINOIS,)	of Winnebago County.
)	
Plaintiff-Appellee,)	
)	
v.)	No. 11-CF-3135
)	
NIKOLAS SENTORO DUNN,)	Honorable
)	Brendan A. Maher,
Defendant-Appellant.)	Judge, Presiding.

JUSTICE BRENNAN delivered the judgment of the court.
Justices Zenoff and Birkett concurred in the judgment.

ORDER

¶ 1 *Held:* Defendant’s postconviction petition raising a claim of actual innocence was properly dismissed as frivolous and patently without merit. Defendant attached an unsigned document purporting to be from an associate claiming that he, not defendant, committed the armed robbery for which defendant was convicted. However, since the associate stated that he told defendant about the robbery immediately after committing it, the information was not newly discovered evidence.

¶ 2 Defendant, Nikolas Sentoro Dunn, appeals from an order of the circuit court of Winnebago County summarily dismissing his petition under the Post-Conviction Hearing Act (Act) (725 ILCS 5/122-1 *et seq.* (West 2018)) for relief from his conviction of armed robbery (720 ILCS 5/18-

2(a)(1) (West 2010)). Defendant argues that his petition stated an arguable claim of actual innocence. We affirm.

¶ 3

I. BACKGROUND

¶ 4 On February 9, 2015, defendant pleaded guilty to armed robbery, and the court sentenced him to a 24-year prison term. The crime took place on November 9, 2011, at a Walgreens store in Rockford. The record reflects that at the time of the robbery, defendant, Devontae Wrancher, and another individual were persons of interest in a string of robberies in the area. All three lived at the same address on Grinnell Court.

¶ 5 The factual basis for defendant's plea indicated that defendant entered the Walgreens through an unlocked employee's entrance. Evelyn Yuzon entered a secure office area and observed two individuals taped to chairs in the office. Yuzon also saw Cindy Schnell kneeling with a masked man standing over her with a knife. Yuzon helped Schnell transfer money from a safe to a bag. The masked man taped Yuzon to a chair and then walked Schnell at knifepoint to an adjoining room where he demanded her car keys and taped her to a chair. The perpetrator fled the scene in Schnell's vehicle with the money taken from the safe.

¶ 6 A Mrs. Troche saw an unknown vehicle nearly hit her mailbox before parking in a driveway near her house. She saw an individual carrying something as he left the vehicle and fled through a group of trees. Troche called 911. A State Police canine unit tracked the individual along the path where Troche saw him flee. The path led to an address on Grinnell Court. Simultaneous with Troche's observations, detective Randy Berke observed an individual enter what was later determined to be defendant's apartment building. Officers knocked on the door, and defendant let them in. Defendant eventually agreed to come down to the police station, where he admitted his participation in the Walgreens robbery.

¶ 7 Police executed a search warrant at defendant's apartment and recovered items including a safe, a large amount of currency and wrapped coins, and a distinctive striped hoodie that the robbery victims observed the perpetrator wearing.

¶ 8 On March 11, 2020, defendant filed his postconviction petition, raising a claim of actual innocence. He alleged that, years after the crime, Wrancher came forward to "shed light [*sic*] on what really [*sic*] happen [*sic*]." Defendant submitted his affidavit, averring, "[Nine] years [after my guilty plea,] I was going to court to see Judge Maher in mere passing I seen [*sic*] my witness Devontae Wrancher[.] We didn't get to say anything to each other[.] But all he said was sorry." Days after seeing Wrancher, defendant averred, the mother of defendant's child told defendant that Wrancher told her that he had written to Judge Maher, stating that defendant had nothing to do with the Walgreens robbery. Wrancher sent a copy of the correspondence to defendant's child's mother.

¶ 9 Defendant attached to his petition a typed, unsigned, unnotarized document purporting to be Wrancher's affidavit. The document, dated December 31, 2019, stated that Wrancher, not defendant, committed the Walgreens robbery. According to the document, Wrancher told defendant about the crime immediately after committing it. The document stated, "The reason i [*sic*] am writing is because [defendant] was chargd [*sic*] for a crime he did not commit i [*sic*] committed [*sic*] the crime that day and want to take full responsibility for my actions." The trial court summarily dismissed the petition, and this appeal followed.

¶ 10

II. ANALYSIS

¶ 11 We begin with a summary of the relevant principles governing proceedings under the Act. Our supreme court has stated as follows:

“The Act [citation] provides a remedy for incarcerated defendants who have suffered a substantial violation of their constitutional rights at trial. Under the Act, a postconviction proceeding contains three stages. At the first stage, the circuit court must independently review the postconviction petition, without input from the State, and determine whether it is ‘frivolous or is patently without merit.’ [Citation.] If the court makes this determination, the court must dismiss the petition in a written order. [Citation.] If the petition is not dismissed, the proceedings move to the second stage. [Citation.]

At the second stage, counsel is appointed to represent the defendant, if he is indigent [citation], and the State is permitted to file responsive pleadings [citation]. The circuit court must determine at this stage whether the petition and any accompanying documentation make a substantial showing of a constitutional violation. [Citation.] If no such showing is made, the petition is dismissed. If, however, the petition sets forth a substantial showing of a constitutional violation, it is advanced to the third stage, where the circuit court conducts an evidentiary hearing [citation].” *People v. Johnson*, 2018 IL 122227, ¶¶ 14-15.

¶ 12 During a first-stage postconviction review, the petition’s allegations must be liberally construed and taken as true. *People v. Harris*, 224 Ill. 2d 115, 126 (2007). Section 122-2 of the Act provides that “[t]he petition shall have attached thereto affidavits, records, or other evidence supporting its allegations or shall state why the same are not attached.” 725 ILCS 5/122-2 (West 2018). The purpose of this requirement is to “establish that a petition’s allegations are capable of objective or independent corroboration.” *People v. Hodges*, 234 Ill. 2d 1, 10 (2009). A petition is frivolous or patently without merit, and will be summarily dismissed at the first stage, if it has no arguable basis either in law or in fact. *Id.* at 12. This is the case when the petition “is based on an

indisputably meritless legal theory or a fanciful factual allegation.” *Id.* at 16. “An example of an indisputably meritless legal theory is one which is completely contradicted by the record.” *Id.* “Fanciful factual allegations include those which are fantastic or delusional.” *Id.* Our review of a first-stage dismissal is *de novo*. *People v. Barghouti*, 2013 IL App (1st) 112373, ¶ 13.

¶ 13 To establish a claim of actual innocence, the supporting evidence must be newly discovered, material, noncumulative, and of such conclusive character that it would probably change the result on retrial. *People v. Washington*, 171 Ill. 2d 475, 489 (1996) (setting forth standard for actual-innocence claim raised in first postconviction petition); see also, *Robinson*, 2020 IL 123849, ¶ 47. In summarily dismissing the petition, the trial court reasoned, *inter alia*, that Wrancher’s “affidavit” was not newly discovered evidence. Evidence is not newly discovered if the defendant could have discovered it sooner through due diligence. *People v. Ortiz*, 235 Ill. 2d 319, 334 (2009). According to the “affidavit,” Wrancher told defendant that he had committed the crime immediately after it had occurred. Thus, when defendant entered his plea, he was necessarily aware of the evidence that he now claims is newly discovered. Defendant chose to plead guilty rather than develop evidence that Wrancher committed the crime. Under these circumstances, defendant cannot satisfy his burden of showing that the evidence was newly discovered.

¶ 14 Defendant argues, however, that the evidence was still arguably newly discovered because Wrancher did not come forward until 2019. Defendant contends that “it is arguable that [Wrancher] was avoiding admitting his guilt until the time of this petition, to avoid self[-]incrimination.”

¶ 15 However, the State correctly responds that the three-year limitations period for the Walgreens robbery offenses has passed. 720 ILCS 5/3-5 (West 2010). The crimes took place on November 9, 2011. Thus, the limitations period expired on November 9, 2013. Defendant entered

his plea on February 9, 2015. There is nothing in defendant's petition or the record indicating that Wrancher faced any charges related to the Walgreen's robbery. Nor is there anything in the petition or the record suggesting grounds for tolling the statute of limitations. Thus, there is no reason to believe that, when defendant entered his plea, Wrancher was at risk of prosecution in connection with the Walgreen's robbery if he gave testimony implicating himself and exonerating defendant.

¶ 16 Defendant argues in his reply brief:

“[W]e do not truly know whether the statute of limitations ran, as the evidence shows that this case was committed as part of a string of several robberies. Perhaps Wrancher committed more crimes after [defendant] was apprehended for this one. Perhaps Wrancher would have been charged for a different offense pursuant to the string of robberies, or pursuant to his background, or pursuant to other associated criminal activity, and perhaps Wrancher's charged offense is subject to a different statute of limitations.”¹

¶ 17 We are unpersuaded. We fail to see how the possibility that Wrancher was charged with other crimes has any bearing on the limitations period for the crimes associated with the Walgreens robbery. Defendant bases his argument on purely hypothetical scenarios.

¶ 18 Accordingly, because defendant's petition does not state an arguable actual-innocence claim based on newly discovered evidence, the court's summary dismissal was proper.

¹ Before defendant entered his plea, his attorney attempted to contact Wrancher as a potential witness for a motion to suppress the search of the apartment. Defendant's attorney advised the court that he had learned that Wrancher had a case pending and Wrancher's attorney had not given defendant's attorney permission to speak with Wrancher.

¶ 19

III. CONCLUSION

¶ 20 For the reasons stated, we affirm the judgment of the circuit court of Winnebago County.

¶ 21 Affirmed.