

644 (1994). The defendant has filed a response to OSAD's motion. Having considered OSAD's motion and the defendant's response, and after examining the entire record on appeal, this court grants OSAD's motion and affirms the judgment of the circuit court.

¶ 3

BACKGROUND

¶ 4 In 2004, the defendant was charged with (count I) first-degree murder (strong probability of death or great bodily harm), (count II) first-degree murder (felony), (count III) armed violence, and (count IV) aggravated battery. In each of the two murder counts, the named victim was Geracy A. Stephens.

¶ 5 On February 8, 2006, the defendant pleaded guilty to first-degree murder as charged in count I, the other three counts were dismissed, and the defendant was sentenced to imprisonment for 20 years, all in accordance with an agreement between the defendant and the State.

¶ 6 On November 2, 2009, the defendant filed in this court (not in the circuit court) a notice of appeal. Due to the defendant's obvious failure to comply with Supreme Court Rule 606(b) (eff. Dec. 1, 1999), the notice of appeal was stricken, and the appeal was dismissed. *People v. Anthony*, No. 5-09-0597 (2009).

¶ 7 On February 17, 2010, the defendant filed in the circuit court a *pro se* petition for postconviction relief. The apparent gravamen of the petition read as follows:

"An investigation conducted by a licensed Investigators' [*sic*] produced the existence of other wittiness [*sic*], D'marco Daniels, Ashley Daniels, Ashley Outlaw, and Stan Williams, new statement from Vernetta Foughter, and Aeisha Stephens form [*sic*] Kellerman Investigations. Report of this investigation is

enclosed. Reports of statements made by witness Paris Owens is [sic] also enclosed from Jim Bivens Investigations."

The prayer for relief read as follows:

"In the interest of justice, Defendant request [sic] further investigation into any accounts of case at hand, and a evidentially [sic] hearing beheld [sic] to come to a factual basis, so if there be [sic] a finding of exonerating or mitigating circumstances the Defendant move [sic] the court to set aside First Degree Murder conviction and be sentence [sic] under second-degree status."

¶ 8 Attached to the *pro se* petition were: (1) one page from the transcript of the plea hearing; (2) a two-page handwritten letter from the defendant, wherein he described the terms of his plea agreement, stated that he hired a private investigator who obtained "new statements from previous witnesses," and expressed the belief that "new witnesses that need to be contacted" would provide helpful statements; (3) a nine-page report from Kellerman Investigations describing private investigators' efforts in January, February, and March of 2008 to locate and interview possible witnesses, and describing an interview in February 2008 with a Stan Williams; (4) a letter dated December 8, 2004, from Jim Bivens Investigations, wherein private investigator Bivens described an interview with a Paris Owens; (5) a letter dated December 29, 2004, from Jim Bivens Investigations, wherein Bivens described an interview with a Mario Moses; and (6) an affidavit dated October 1, 2009, from Jevon B. Anthony, a brother of the defendant, describing a fight between the defendant and "Gracye" on May 9, 2004.

¶ 9 The circuit court appointed postconviction counsel for the defendant. The State filed a motion to dismiss the *pro se* postconviction petition due to untimeliness. Subsequently, the defendant filed by appointed counsel an amended petition for postconviction relief. In the amended petition, the defendant did not set out any new claims; he realleged the claims set out in the *pro se* petition. In addition, he offered an explanation for the delay in filing the *pro se* petition. According to the defendant, plea counsel failed to advise him of the time limitations for filing petitions under the Post-Conviction Hearing Act, and the defendant did not learn of those time limitations until February 2010, when postconviction counsel was appointed.

¶ 10 On August 7, 2012, before the circuit court, the State moved to dismiss the amended postconviction petition on the ground of untimeliness, and asked that its written motion to dismiss the *pro se* petition apply to the amended petition. The State noted that the *pro se* petition was filed "well beyond the three-year period stated in the statute." The defendant's postconviction counsel asked the court to deny the motion to dismiss. Postconviction counsel faulted plea counsel and the court for failing to inform the defendant, at the time of the guilty plea, about the filing deadlines applicable to postconviction petitions. The court granted the State's motion to dismiss the amended postconviction petition.

¶ 11 On behalf of the defendant, the clerk of the circuit court filed a timely notice of appeal from the dismissal order. The court appointed OSAD to serve as the defendant's counsel on appeal.

¶ 12

ANALYSIS

¶ 13 On appeal, the circuit court's dismissal of a postconviction petition without an evidentiary hearing is reviewed *de novo*. *People v. Coleman*, 183 Ill. 2d 366, 389 (1998).

¶ 14 The Post-Conviction Hearing Act (725 ILCS 5/122-1 to 122-8 (West 2008)) provides a means whereby criminal defendants may assert that their state or federal constitutional rights were substantially violated in the proceedings that resulted in their convictions or sentences. 725 ILCS 5/122-1(a)(1) (West 2008); *People v. Coleman*, 206 Ill. 2d 261, 277 (2002). A defendant commences a postconviction proceeding by filing a verified petition in the circuit court. 725 ILCS 5/122-1(b) (West 2008). Time limitations apply. 725 ILCS 5/122-1(c) (West 2008). "If a defendant does not file a direct appeal, the post-conviction petition shall be filed no later than 3 years from the date of conviction, unless the petitioner alleges facts showing that the delay was not due to his or her culpable negligence." *Id.* Culpable negligence is conduct greater than ordinary negligence and akin to recklessness. *People v. Bocclair*, 202 Ill. 2d 89, 108 (2002). However, no time limitation applies to a petition advancing a claim of actual innocence. 725 ILCS 5/122-1(c) (West 2008).

¶ 15 In the instant case, there is no doubt or dispute that the defendant filed his postconviction petition beyond the applicable three-year deadline. Conviction was entered on February 8, 2006, and the *pro se* petition was not filed until four years and nine days thereafter, on February 17, 2010. In the amended postconviction petition, the defendant averred that the delay in filing was due to plea counsel's failure to inform him of the time limitations applicable to postconviction petitions. This alleged fact does not

show that the delay was not due to the defendant's culpable negligence. A criminal defense attorney has various duties relating to plea negotiations and pleas of guilty. See, e.g., *Missouri v. Frye*, 132 S. Ct. 1399, 1408 (2012) (counsel has duty to advise client-defendant of any plea offers that may be favorable to him); *Padilla v. Kentucky*, 559 U.S. 356, 374 (2010) (counsel has duty to advise noncitizen client-defendant that guilty plea carries a clear risk of deportation). However, no federal or Illinois court of review ever has held that an attorney has a duty to inform a client-defendant who pleads guilty about the deadlines applicable to seeking collateral relief. Indeed, our supreme court has made clear that it is solely the defendant's obligation to know the time limitations for filing his postconviction petition, and his ignorance of the law or his legal rights will not excuse a delay in filing. *People v. Lander*, 215 Ill. 2d 577, 588-89 (2005).

¶ 16 Furthermore, the defendant did not advance a claim of actual innocence. He merely asserted that some unspecified witnesses might produce evidence sufficient to reduce his conviction from first-degree murder to second-degree murder. This allegation does not come close to setting out a claim of actual innocence, which generally requires the presentation of new, material, noncumulative, and conclusive evidence that totally vindicates or exonerates a defendant of the crime of which he was convicted. See, e.g., *People v. Anderson*, 401 Ill. App. 3d 134 (2010). The actual-innocence exception to the time limitation does not apply here.

¶ 17 Given the defendant's failure to allege facts showing that his delay in filing his petition was not due to his own culpable negligence, the circuit court had no real choice except to dismiss the petition. Any argument to the contrary would have no merit.

Accordingly, OSAD's motion to withdraw as the defendant's counsel on appeal is hereby granted, and the judgment of the circuit court is hereby affirmed.

¶ 18 Motion granted; judgment affirmed.