2016 IL App (1st) 140129-U

SIXTH DIVISION
June 30, 2016

No. 1-14-0129

IN THE
APPELLATE COURT OF ILLINOIS
FIRST JUDICIAL DISTRICT

THE PEOPLE OF THE STATE OF ILLINOIS,	)	Appeal from the
	)	Circuit Court of
Plaintiff-Appellee,	)	Cook County.
	)	
v.	)	No. 03 CR 12526
	)	
CHARLES PATTON,	)	Honorable
	)	Dennis J. Porter,
Defendant-Appellant.	)	Judge Presiding.

PRESIDING JUSTICE ROCHFORD delivered the judgment of the court.
Justices Hall and Delort concurred in the judgment.

ORDER

¶ 1 *Held:* Summary dismissal of postconviction petition was proper where defendant's claim of actual innocence was not supported by conclusive evidence that the outcome of the trial would be different and did not set forth a claim of knowingly perjured testimony.

¶ 2 Following a jury trial, defendant Charles Patton was convicted of criminal drug conspiracy and possession of a controlled substance with intent to deliver and received a sentence of 44 years' imprisonment. We affirmed the judgment on direct appeal. *People v. Patton*, No. 1-07-1625 (2009) (*Patton I*) (unpublished order under Supreme Court Rule 23). Defendant now appeals from the summary dismissal of his petition under the Post-Conviction

Hearing Act (Act) (725 ILCS 5/122-1 (West 2012)). On appeal, defendant argues that the petition raised valid claims of actual innocence based upon the recantation of a key trial witness, Torrick Hall, and of the State's knowing use of Torrick's perjured testimony to support defendant's conviction. We affirm.

¶ 3 Defendant and his codefendants: Inita Patton (defendant's then-wife); Torrick and Marcus Hall (brothers); Shawn Jones; Jerry Warren; Edmund Forrest; Darryl Hale; Terrance Sanders; Jermaine Johnson; and Dion Luster were charged in a twelve count indictment with being involved in a criminal drug conspiracy from December 26, 2002, through May 8, 2003. Three counts were against defendant. Count 1 of the indictment alleged that defendant, with the assistance of Inita, organized and managed a heroin distribution operation which employed Jones, Torrick, and Marcus to distribute heroin to dealers including Warren, Forrest, Hale, Johnson, and Luster. The conspiracy count included a suballegation charging defendant with a conspiracy to possess 900 or more grams of heroin with the intent to deliver (PCSI). Count 2 of the indictment alleged that defendant and Jones committed delivery of a controlled substance (DCS) of 100 grams or more but less than 400 grams of heroin on or about March 25, 2003. Count 12 of the indictment alleged that, on or about May 8, 2003, defendant, Inita, and Torrick committed the offense of PCSI as to more than 900 grams of heroin.

¶ 4 The indictment was the result of a three-month investigation of defendant which, because of his stature, was referred to as "Operation Big Man." The investigation included extensive surveillance, wiretaps, and video and phone recordings by the police.

¶ 5 Defendant and Inita were tried before a jury in 2007. The evidence at the trial was set forth in detail in *Patton I*. We summarize the evidence from the trial which is relevant to this appeal.

¶ 6 The State called Torrick as a witness pursuant to a cooperation and plea agreement. Based upon the multiple charges in the indictment, Torrick had faced up to 60 years' imprisonment. In October 2005, the State and Torrick agreed that Torrick would plead guilty to a single count of PCSI (15 grams or more of heroin) and testify truthfully against his codefendants and, at sentencing, the State would recommend a sentence of 10 years' imprisonment, but Torrick would be free to request the minimum 6-year sentence. Torrick would not be required to testify against his brother. Torrick pled guilty to a single PCSI charge in November 2005. After the trial, Torrick was sentenced to 10 years' imprisonment.

¶ 7 Torrick testified that he began working for defendant as part of defendant's drug operations in 1996. At the start, Torrick's duty was to tape packets of heroin which defendant had weighed; defendant would deliver the heroin. Later, Torrick became the "man at the table," and was entrusted with mixing, packaging, and delivering the heroin to codefendants and collecting payment for defendant. Torrick mixed and packaged the heroin at his own home, Marcus's home, and the apartment of his sister, Sherell Lee. Following his May 8, 2003, arrest in Sherell's apartment, officers mentioned to Torrick the prospect of arresting Sherell and taking her children.

¶ 8 The State presented evidence of intercepted telephone conversations between defendant and other persons involved in the drug enterprises; a total of 197 wire-tap recordings were introduced into evidence. Torrick identified the voices on the recordings and explained the

meaning of the recorded conversations. Additionally the State presented the testimony of the police officers who had observed and recorded defendant and codefendants during the investigation and listened to the intercepted calls.

¶ 9 For example, defendant, Warren, and Jones were recorded arranging a meeting for March 25, 2003, at Pet Spa, a store in Hyde Park which was owned by defendant and Jones. Police set up surveillance near Pet Spa and observed Jones deliver a brown bag to Warren, who then drove away. Based on these observations, other officers followed and then stopped Warren's vehicle. Warren allowed them to search his vehicle for weapons on the pretense that the police were investigating shootings. During the search, an officer surreptitiously took the brown bag from the vehicle which contained 195 grams of heroin. Warren was allowed to leave after the stop. A short time later, during telephone calls with defendant, Warren said: "they took the *** paint" but "let me ride" and "didn't do nothing," prompting defendant to reply that there was "something wrong."

¶ 10 After police had observed Forrest meeting with Torrick on April 17, 2003, officers stopped Forrest, recovered a bundle containing 468 foil packets, and arrested him. A portion of the packets was tested and found to contain 16.1 grams of heroin. Officers then intercepted a call from Sanders to defendant reporting Forrest's arrest; a short time later, defendant called Torrick and informed him of the same. Forrest later called Torrick, told him of the loss of the heroin, and asked Torrick to assure defendant that he would "make everything all right."

¶ 11 Similarly, officers stopped Hale's vehicle after Hale met Torrick on April 30, 2003, and discovered a ball of tape which contained 234 foil packets. A portion of the packets tested positive for 15 grams of heroin. After Hale was arrested, he called Torrick from the police

station and asked him to "tell Big Fella to reach for me." Torrick called defendant to report Hale's arrest.

¶ 12 In his testimony, Torrick identified the voices of defendant's two heroin suppliers, Ava and Ebineezer (Abe) on recorded telephone conversations with defendant. The recordings included a call to Ava where defendant promised to wire her money. Defendant was observed picking up Ava at Midway Airport on May 2, 2003. The recordings also revealed conversations between defendant and Abe arranging a 2003 meeting of Torrick and Abe's representative near Midway Airport, a meeting which was observed by police. Torrick testified to delivering money collected from the sale of heroin to Abe's associate, and this meeting was filmed by the police.

¶ 13 Anthony Scott Wilson testified that on March 25, 2003, defendant, Inita, and Torrick came to his apartment. Torrick was carrying a black bag. Inita explained to Wilson that the bag contained compact discs and digital tapes that she wanted to put in storage. Wilson and Inita had previously discussed renting a storage locker as his apartment was too small for his possessions. The bag was left at Wilson's apartment that night. Two days later, Wilson and Inita rented a locker at a storage facility. They left the black bag (inside a box) and several boxes of Wilson's belongings in the locker. Inita gave Wilson the money to rent the locker. Wilson gave Inita the keys to the locker. Wilson and Inita next went to the storage facility on May 1, 2003, however, the storage facility was closed. The records from the storage facility confirmed that no one entered the locker at any time after March 27—the day Wilson and Inita first rented it—through May 1.

¶ 14 In an intercepted call, made on the evening of May 1, 2003, defendant asked Inita: "you think I can go to that thing in the morning or tonight;" adding "what you have the keys to." Inita

asked defendant: "you need the nine?" Defendant answered: "yeah," and Inita said: "so just bring the bag." Defendant told her no and that he would meet her "by dude crib." Later that day, in a phone call, Inita told defendant that she was at Wilson's apartment and they were going to be "getting a couple of things for storage." In another call that day, Inita assured defendant that she was on her way, but then clarified: "not to Torrick's yet" because they first had to "drop the stuff off." However, a few minutes later, Inita informed defendant that the storage facility was closed, and defendant suggested she return home. In response to defendant's inquiry, Inita told defendant the storage facility opened at 7 a.m. the next morning.

¶ 15 Wilson testified that he, defendant, and Inita went to the storage facility around 7 a.m. the next day (May 2) and entered the locker with keys which Inita took from her purse. While inside the locker, defendant removed a manila envelope from the black bag. Video surveillance of the storage facility from May 2 showed defendant at the locker. The activity reports from the storage facility showed that no one entered the locker after defendant, Inita, and Wilson left there on May 2 until May 8.

¶ 16 On May 8, 2003, the police executed search warrants at different locations. In searching Sherell's apartment, officers found a large amount of heroin, various supplies and tools for processing and packaging heroin, including a bottle of "super lactose," a mixing agent. Torrick was at Sherell's apartment during the search. Police found 250 tin foil packets wrapped in yellow tape (later determined to contain 15.3 grams of heroin) on Torrick's person, and arrested him.

¶ 17 In searching the home where Torrick lived with his mother, the police found a gun and two safes which contained an approximate total of $35,000. Police found heroin and guns in the garage.

¶ 18 When entering defendant's home, police found him standing in a hallway with a loaded gun. During the search of defendant's home, police recovered guns, 24 full bottles of super lactose in a case with Pet Spa listed on the shipping label and two empty bottles of super lactose.

¶ 19 A purse found in defendant's master bedroom contained a key which police used to open the storage locker, but they did not enter the locker. The police returned there after obtaining both Inita's written consent, and a warrant to search the storage locker. In the locker, officers recovered the black duffel bag which contained a scale and 63 plastic bags. The parties stipulated that 16 of the plastic bags were tested and found to contain 1,575.3 grams of heroin.

¶ 20 The jury found defendant guilty of PCSI (900 grams or more of heroin) and of one allegation of criminal drug conspiracy based thereon. These charges related to the heroin recovered from the storage locker. Defendant was found not guilty of DCS and three suballegations of the criminal drug conspiracy count. The court merged defendant's convictions and sentenced defendant to 44 years' imprisonment. The jury found Inita not guilty on all charges against her.

¶ 21 On direct appeal, defendant argued, in part, that the trial court erred by admitting wiretap recordings of conversations about the storage locker between defendant and Inita, and that the evidence was insufficient to sustain his convictions.

¶ 22 As to the recorded conversations between defendant and Inita, we found that the agency exception to marital privilege applied in that Inita acted as defendant's agent regarding the

storage locker and, any error in the admission of the recordings was harmless because Wilson testified about the circumstances surrounding the storage locker. As to defendant's argument that the State had not met its burden of proving his guilt in that Torrick's testimony was provided in exchange for a lenient sentence, we found Torrick's testimony as to defendant's heroin enterprise was detailed and well-corroborated by the other evidence, including the recorded conversations and the police observations of drug transactions, and the drugs and contraband recovered by the police.

¶ 23 Defendant, by private counsel, filed the petition on March 30, 2012. Plaintiff claimed actual innocence based on newly-discovered evidence which showed the heroin in the storage locker belonged not to defendant but to Torrick. Attached to the petition were the affidavits of: defendant; Marie Willette; Torrick's mother; Parrish Anderson; Shawn Jones; and Sarah Patton.

¶ 24 In her June 2011 affidavit, Willette made the following statements: Willette understood "now that Torrick repeatedly bagged heroin at Sherell's apartment" and that the proceeds from the sale of the heroin were kept in the safes recovered by police from her home.

¶ 25 In late 2002 and 2003, Willette overheard Torrick on phone calls saying that he needed to have a "bin" or storage locker to put "this stuff" or "drugs into the 'bin.' " In September 2003, Torrick told Willette that the heroin in the "bin" belonged to him, and Torrick felt guilty for not taking responsibility for this heroin. Torrick admitted to her that "much" of his testimony against defendant was false. He told Willette that the police coerced him to cooperate by making threats that they would take away Sherell's children and Willette's home.

¶ 26 In August 2003 Torrick, while in custody, admitted to Willette that he was "Big Man." At the time of his arrest, Torrick weighed nearly 400 pounds; the State "advised him to lose weight before testifying". Willette knew defendant as "Chill," but not "Big Man."

¶ 27 Willette did not attend the trial because Torrick's counsel told her she did not need to be there. Had she been in court to hear Torrick's false testimony, she would have "spoken up."

¶ 28 In his November 2011 affidavit, Anderson averred that he and Torrick, who was known as Rube, grew up in the same neighborhood. While Anderson and Torrick were incarcerated at the Cook County Department of Corrections in October 2005, Torrick "confided in him" and "admitted concealing a massive amount of 'work,' which [he] knew to mean drugs, in a storage locker rented by [defendant]." Torrick was threatened that his sister's children would become wards of the State if he did not testify falsely that the drugs in the storage locker belonged to defendant.

¶ 29 Anderson later met defendant "socially" as inmates in the Western Illinois Correctional Center. Anderson realized that defendant was "Chill," the man against whom Torrick had falsely testified. Anderson told defendant what Torrick had said and defendant asked him to provide an affidavit.

¶ 30 In his February 2012 affidavit, Jones averred that, in May 2003, before Torrick was arrested, he came to Pet Spa carrying a "dark-colored" bag and asked Jones if he could briefly store the bag there "as a favor." Jones was suspicious of what the bag might contain, and declined.

¶ 31 Sarah Patton, in her March 2012 affidavit, stated that she has been defendant's girlfriend since 2004. Torrick called her in August or September 2010 and said that he "felt bad that

[defendant] was in prison for drugs that belonged to" him. Torrick "was willing to do the right thing and admit" that the storage-locker heroin was his. Sarah had not yet met Torrick at that time.

¶ 32 In September 2010, Sarah drove Torrick to the offices of defendant's counsel. During the ride Torrick again admitted that the heroin in the storage locker was his. However, Sarah understood that Torrick refused to talk to defense counsel on the advice of his own attorney. Sarah, Willette, Anderson, and Jones each averred that they were not threatened, nor were promises made, to provide their affidavits and were willing to testify.

¶ 33 Defendant, in his March 23, 2012, affidavit averred that he "knew nothing about" the heroin in the storage locker and never possessed it or intended to possess it. In the spring of 2010, Torrick called defendant to say he "felt bad" that defendant "was in prison for drugs that were his" and that he testified falsely against defendant in part because the police had threatened to take his sister's children.

¶ 34 On June 22, 2012, the circuit court summarily dismissed the petition. The court noted that, except for Jones's affidavit, the affidavits submitted with the petition contained newly-discovered evidence. However, the court found that the affidavits contained unreliable hearsay statements made by Torrick. The court believed that the statements did not fall within the statements against the penal interest exception to the hearsay rule under *Chambers v. Mississippi*, 410 U.S. 284 (1973). Thus, the evidence as to Torrick's statements would not have been admissible, and there was no reasonable probability that the newly discovered evidence would have affected the outcome of the trial. Lastly, the court stated that the evidence against defendant was overwhelming. The court found it "impossible to listen to the tapes played at

[defendant's] trial and arrive at the conclusion that the malefactor behind this sordid tale is anyone but [defendant]."

¶ 35 On July 17, 2012, defendant filed a motion to reconsider the dismissal of the petition and, on October 1, 2013, filed an amended motion to reconsider supported by a transcript of a May 2013 sworn statement made by Torrick under examination by defendant's counsel and briefly by his own counsel. The State was not present during the statement.

¶ 36 In his statement, Torrick said the following: In 1996 or 1997, defendant taught him how to bag heroin. When Torrick was arrested, police told him he faced the prospect of a long prison sentence, and threatened to detain his sister or take her children. Torrick did not agree to testify against defendant at that time. About a year later, at his counsel's suggestion, defendant met with officers who played recorded conversations and asked for his interpretation of what was being said. Torrick said that his "[i]nterpretation to [his] knowledge [was] correct." He told the police that he did not wish to testify against his brother Marcus. In a follow-up meeting, his counsel told Torrick that "they" were offering a substantially reduced sentence for his testimony.

¶ 37 Torrick's said his testimony at trial was "almost all honest, but certain things I left out or didn't mention that could have probably helped [defendant] or hurt [defendant]." When asked for specifics, Torrick said that the "stuff" in the storage locker "wasn't Charles.' " He explained that the heroin " 'was the connects;' " " 'the main heroin suppliers;' " or " 'the Nigerians.' "

¶ 38 According to Torrick, defendant's involvement in the heroin industry ended in the early 2000's when he went into the music business and defendant's brother Marcus took over defendant's role. Torrick maintained that defendant was "not really" in the heroin trade in May 2003.

¶ 39 Torrick denied being promised anything in exchange for his statement. Torrick acknowledged he could be charged with perjury and "that there is a remote chance" the State could revoke his plea deal but was "willing to sign a statement."

¶ 40 The court denied the motion to reconsider on December 4, 2013. Defendant timely appealed.

¶ 41 Defendant first argues that the summary dismissal of his postconviction petition and the denial of his motion to reconsider were erroneous as the affidavits and Torrick's statement sufficiently support Torrick's recantation and defendant's actual innocence claim.

¶ 42 The Act provides a mechanism for a defendant to challenge a conviction or sentence for constitutional violations. *People v. Nunez,* 325 Ill. App. 3d 35, 41 (2001). Generally, there are three stages to postconviction proceedings and the first stage is commenced by the filing of a petition. *People v. Lamar*, 2015 IL App (1st) 130542, ¶ 11.

¶ 43 At the first stage, a postconviction petition may be summarily dismissed within 90 days of filing if the court finds it frivolous or patently without merit. 725 ILCS 5/122-2.1(a)(2) (West 2012). While a petition should not be summarily dismissed unless it has no arguable basis in law or fact, a petition at this first stage must provide sufficient factual basis to show that its allegations are capable of objective or independent corroboration. *People v. Allen*, 2015 IL 113135, ¶¶ 24-25. Well-pled factual allegations in a petition and its supporting evidence must be taken as true unless they are positively rebutted by the record. *People v. Sanders*, 2016 IL 118123, ¶ 48. Our review of a summary dismissal is de novo. *Allen*, 2015 IL 113135, ¶ 18.

¶ 44 In order to succeed on a claim of actual innocence, a defendant must present new, material, non-cumulative evidence that is so conclusive it would probably change the result on

retrial. *Sanders*, 2016 IL 118123, ¶ 24. Evidence is new if it was discovered after trial and could not have been discovered earlier through the exercise of due diligence, material if it is relevant and probative of the defendant's innocence, and non-cumulative if it adds to the evidence heard at trial. *Id.* ¶ 47; *People v. Coleman*, 2013 IL 113307, ¶ 96. Most importantly, defendant's new evidence must be so conclusive that it is more likely than not that no reasonable juror would find him guilty beyond a reasonable doubt in light of this evidence. *Sanders*, 2016 IL 118123, ¶ 47. The new evidence must place the trial evidence in a different light and undermine the court's confidence in the factual correctness of the guilty verdict. *Coleman*, 2013 IL 113307, ¶ 97. Actual innocence is not the same as sufficiency of the evidence or reasonable doubt, nor mere impeachment of trial witnesses, but a claim of vindication or exoneration. *Id.*; *People v. House*, 2015 IL App (1st) 110580, ¶¶ 41, 46.

¶ 45 A witness's recantation of his prior testimony is generally viewed as inherently unreliable and does not merit a new trial except in extraordinary circumstances. *Sanders*, 2016 IL 118123, ¶ 3. Defendant's actual innocence claim, as alleged in the petition, and the affidavits of defendant, Willette, Anderson, Jones, and Sarah was that Torrick told them that the heroin in the storage locker belonged to him and not to defendant, and that he was forced to testify falsely by threats from the police that they would take Sherell's children and his mother's home away. However, hearsay statements in affidavits are insufficient to support a postconviction petition. *People v. Gacho*, 2012 IL App (1st) 091675, ¶ 16 (citing *People v. Coleman*, 183 Ill. 2d 366, 381 (1998)); *People v. Wallace*, 2015 IL App (3d) 130489, ¶ 25. Defendant argues that the statements against the penal interest exception to the hearsay rule allow consideration of Torrick's statements as set forth in the affidavits. We disagree.

¶ 46 In considering whether this exception to the hearsay rule applies a court will consider four criteria: the statement was made spontaneously to a close acquaintance shortly following the crime, was corroborated by other evidence, was self-incriminating and against the declarant's interest, and there is adequate opportunity to cross-examine the declarant. *People v. Jones*, 2012 IL App (1st) 093180, ¶ 56 (citing *Chambers*, 410 U.S. at 300-01). While existence of all four criteria is not a *per se* requirement for admissibility, the absence of a criterion generally results in the statement not meeting the touchstone of reliability or trustworthiness. *Id.* ¶ 57.

¶ 47 In examining the affidavits under the criteria of *Chambers*, we make certain observations. Torrick did not have an existing relationship with Sarah and was not a close acquaintance of Anderson at the time he purportedly made the statements to them. Torrick's statements to Willette, Anderson, Sarah, and defendant were not made spontaneously, nor shortly after, the crime occurred. Torrick's statements to Willette, Anderson, Sarah, and defendant, that the heroin in the storage locker was his and not defendant's, are not corroborated by the evidence of record. The evidence at trial established that defendant was the leader of the heroin enterprise and that Torrick worked for defendant. Torrick, as defendant's employee, packaged and delivered the heroin under defendant's direction. Willette's affidavit, in fact, confirms Torrick's role in defendant's heroin enterprise. The evidence at trial also established defendant's involvement with and knowledge of the rental of the storage locker by Wilson and Inita. On direct appeal, we found Inita acted as an agent of defendant as to the rental of the storage locker. The evidence also showed defendant's knowledge and control over the heroin in the duffle bag which was found in the storage locker.

¶ 48 Finally, we also note that defendant has not shown that Torrick would now be available for cross-examination as to the heroin in the storage locker. While Torrick in his statement said he would sign a written statement, he did not assert a willingness to testify at a new trial or a postconviction hearing where he would be subject to cross-examination by the State. We conclude that the hearsay statements in the affidavits would not be admissible under *Chambers.*

¶ 49 Further, Jones's statement that Torrick asked him to store a "dark colored" bag, defendant's statement that he did not know anything about the heroin, and Torrick's claims to the affiants of being threatened, may serve to impeach the evidence at trial, but do not exonerate defendant.

¶ 50 Therefore, even if this evidence was newly discovered, material, and noncumulative, the affidavits do not undermine our confidence in the factual correctness of the jury's verdict. The circuit court properly dismissed the petition.

¶ 51 To support his motion to reconsider the dismissal of his petition, defendant submitted Torrick's sworn statement. In that statement, Torrick stated the heroin in the storage locker "wasn't Charles,' " it was "the main heroin suppliers." Torrick also said defendant was not really in the drug business in 2003 and that defendant's brother had assumed defendant's leadership role by that time.

¶ 52 Defendant presented evidence in support of his actual innocence claim which was inconsistent. The petition and the affidavits attached thereto were clearly to the effect that the heroin belonged to Torrick. In seeking reconsideration, defendant submitted Torrick's sworn statement where Torrick now posited that the heroin in the storage locker had some unspecified connection to unnamed suppliers. Defendant, therefore, presented new evidence attributing

control of the heroin to two possible entities—Torrick or the suppliers. On this basis alone, we would find that defendant's newly discovered evidence would not serve to exonerate defendant.

¶ 53 Upon reviewing the trial record, we find considerable evidence—unrelated to Torrick's testimony, and rebutting defendant's new evidence. The evidence showed that defendant was the captain of the heroin trade at issue. In both dismissing the petition and denying reconsideration, the circuit court noted that the evidence linking defendant to the heroin conspiracy came from more than Torrick's testimony. This court, on direct appeal, found that Torrick's testimony of defendant's role as leader of the drug enterprise was corroborated by the police surveillance, recordings, and recovered evidence. *Patton I*, No. 1-07-1625 (2009) (unpublished order under Supreme Court Rule 23) at 33. As the kingpin, defendant received heroin from suppliers and gave it to Torrick to package and deliver to the codefendants. To achieve the goals of the enterprise, the heroin necessarily passed through several hands until it, ultimately, reached the buyers. Whether the heroin in the storage locker was Torrick's, who acted under the direction of defendant, or the suppliers of the heroin, would not exonerate defendant in light of the overwhelming trial evidence. That evidence was: the very large amount of heroin found in the storage locker had been divided into individual bags; defendant was responsible for placing the heroin into the storage locker; Inita retained the keys to the storage locker; and defendant later exercised control over the storage locker and the duffel bag containing the heroin. The circuit court did not err in denying reconsideration of the dismissal of the petition. See *People v. Alexander*, 2014 IL App (2d) 120810, ¶ 36. (To prove PCSI, the State was required to show the defendant had knowledge of the presence of the controlled substance, the controlled substance

was in the immediate control or possession of the defendant, and the defendant intended to deliver the controlled substance.)

¶ 54 Defendant argues that the not-guilty verdicts on certain counts indicate that the jury discounted evidence that defendant was the leader of the conspiracy. However, "constitutional law does not require consistency in the verdicts." *People v. Reed*, 396 Ill. App. 3d 636, 646 (2009) (citing *United States v. Powell*, 469 U.S. 57, 62 (1984)). Upon reviewing the trial evidence in its entirety, we agree with the circuit court's conclusion that there is ample evidence, beyond Torrick's testimony, that defendant was a party to a drug conspiracy as he was convicted.

¶ 55 Defendant also argues that his petition should not have been summarily dismissed because it presented a claim that his conviction was based on the knowingly perjured testimony of Torrick. The petition, prepared by counsel, presented a single claim of actual innocence. While the petition and supporting evidence clearly allege that Torrick gave false testimony at trial due to police pressure, the petition did not expressly raise a knowing-perjury claim. The claim is forfeited. See *People v. Williams*, 2015 IL App (1st) 131359, ¶¶ 14-24.

¶ 56 Moreover, briefly addressing defendant's claim on the merits (*id.* ¶ 26), for the same reasons we find the evidence of Torrick's recantation to not be of conclusive character, we find there is not a reasonable likelihood that the admission of Torrick's perjured testimony (as we presume arguendo at this stage) affected the judgment. *People v. Lucas*, 203 Ill. 2d 410, 422-24 (2002).

¶ 57 We find no error in the summary dismissal of defendant's postconviction petition. Accordingly, the judgment of the circuit court is affirmed.

¶ 58 Affirmed.