2017 IL App (1st) 143792-U

No. 1-14-3792

Order filed March 8, 2017

THIRD DIVISION

IN THE

APPELLATE COURT OF ILLINOIS

FIRST DISTRICT

THE PEOPLE OF THE STATE OF ILLINOIS,	)	Appeal from the
	)	Circuit Court of
Plaintiff-Appellee,	)	Cook County
	)	
v.	)	No. 06 CR 27588
	)	
RASHED TILLMAN,	)	Honorable
	)	Maura Slattery Boyle,
Defendant-Appellant.	)	Judge Presiding.

PRESIDING JUSTICE FITZGERALD SMITH delivered the judgment of the court. Justices Lavin and Cobbs concurred in the judgment.

ORDER

¶ 1 *Held*: Summary dismissal of defendant's postconviction petition affirmed where he did not make an arguable claim of ineffective assistance of trial counsel or actual innocence.

¶ 2 Defendant Rashed Tillman, who was convicted of first-degree murder for the shooting death of 18-year-old Myeisha Samuels, personally discharging a firearm causing her death, and aggravated discharge of a firearm, appeals from the summary dismissal of his petition for relief under the Post-Conviction Hearing Act (Act) (725 ILCS 5/122-1 *et seq*. (West 2014)). On appeal, defendant contends that his postconviction petition stated the gist of a claim of

ineffective assistance of counsel because his trial attorney did not investigate potential witnesses who defendant argues would have provided exculpatory testimony. Defendant further maintains that the petition stated the gist of a claim of actual innocence based on an affidavit from Armond Williams that described a conversation the affiant had with defendant's codefendant, Darvin Tillman, while they were incarcerated together before the trials in this case. For the following reasons, we affirm.

¶ 3 Defendant's convictions arose from the June 11, 2006, shooting death of 18-year-old Myeisha Samuels in the area of 4946 West Congress Parkway in Chicago, Illinois. Defendant was charged with multiple counts of first-degree murder, aggravated battery with a firearm, attempted first-degree murder of other individuals, unlawful use of a weapon by a felon (UUWF), aggravated discharge of a firearm, and aggravated battery. Codefendant was charged in the same indictment for similar counts and was acquitted after a bench trial. Following defendant's simultaneous but severed jury trial, he was found guilty and sentenced to a total of 55 years' imprisonment. On direct appeal, this court affirmed defendant's convictions and set forth the facts of the case, which we partially repeat here due to the nature of defendant's claim. *People v. Tillman*, 2013 IL App (1st) 101487-U, ¶¶ 1-22.

¶ 4 Chicago police officer Bernard Veleta testified that, in the early morning hours of June 11, 2006, he and his partner were assigned to investigate a shooting near the intersection of Congress Parkway and Lavergne Street in Chicago. They arrived at 4946 West Congress to find a crowd of people and Samuels lying on the ground in a pool of blood. Officer Veleta spoke to others at the scene, including Jovon Thurman[1] and Randall Williams, Jr., both of whom had also

[1] Thurman also goes by the name of Lynell Hicks, and is referred to as such by some who testified at defendant's trial. We will refer to him as Thurman, for the sake of consistency.

been shot. When Officer Veleta went to the hospital where Samuels had been taken, he learned that she had died from a gunshot wound to the head.

¶ 5 Shawntelle Myles testified that on the day in question, she was in the yard of her grandmother's building at 4948 West Congress when, at around 1:20 a.m., her cousin Williams and a group of 8 to 12 friends arrived and gathered in front of the building. Shortly thereafter, Myles heard a gunshot and ran inside her grandmother's building. Once inside, she heard a second gunshot and remained inside her grandmother's house until she heard police arrive. She did not speak to police at the scene, explaining that she was "scared at the time." When she eventually spoke to police later, she could not identify the shooter.

¶ 6 Reginald Bowdery testified that earlier in the evening of June 10, 2006, he saw defendant and codefendant, both of whom he had known for almost 20 years, on three separate occasions driving around the neighborhood in a red or maroon car. Codefendant was driving and defendant was sitting in the front passenger seat. In the early morning hours of the next day, Bowdery was hanging out by a church at the intersection of Congress and Lavergne with four or five friends. At about 1:20 a.m., he saw a large group of people, several of whom he knew from the neighborhood, gathered across the street on Congress. Bowdery then saw the red car again driving west on Congress and toward him with its headlights off. As the car neared, it pulled over to a parking spot. Bowdery observed defendant exit the passenger door of the car and walk behind a white van parked across the street, on the same side where the large group of people were standing. When defendant reached the side of the van closest to the curb, Bowdery saw him fire about nine shots toward the group of people. Defendant then stopped shooting and got back in the red car, which drove down Congress toward Bowdery before turning on Lavergne toward Harrison Street. Bowdery could not see the driver at that time.

¶ 7 When police arrived at the scene, Bowdery and his friends walked away. He did not talk to police or to anyone who had been in the large group of people. He stated that he did not speak to police because "when you live in that neighborhood, you don't necessarily want to be the one who tattles." About a month later, on July 19, 2006, Bowdery was arrested on a narcotics charge. While in custody, he recounted for police what he had seen regarding the incident. After viewing two photo arrays presented by police, Bowdery identified defendant as the person he saw shooting the gun that night and codefendant as the driver of the red car.

¶ 8 Bowdery admitted that he had prior drug convictions for possession and possession with intent to deliver. He pled guilty to the narcotics charge for which he was taken into custody on July 19, 2006, but noted that this charge was eventually "dropped." In October 2007, Bowdery spoke to Quentin Hall, an investigator from the Cook County Public Defender's Office. Bowdery could not remember exactly what he told Hall, but essentially told him he did not see anything on the night in question. He explained that he told Hall "what he wanted to hear" in the hope that Hall would leave, as Bowdery had just gotten out of jail and there were other people nearby when Hall approached him. Lastly, gunshots were frequently heard in the neighborhood and people often do not go to police with information; in this particular instance, Bowdery did not do so because he did not want to deal with the situation.

¶ 9 Detective Jaciento Gonzalez testified that he was assigned to investigate Samuels's murder and that he interviewed Bowdery at the police station on July 19, 2006. Detective Gonzalez recounted that Bowdery told him he had been standing with some friends he called "Jermaine KP, Norm" near the intersection of Congress and Lavergne when he saw a red or maroon car pull up on Congress on the opposite side of the street. Bowdery told Detective Gonzalez that codefendant was driving the car and defendant was a passenger. Once the car

stopped, defendant exited, ran behind a white van, stood on the sidewalk and fired about 9 or 10 shots at a group of people standing in front of a building on Congress. Defendant then jumped back in the car, which pulled away and turned left on Lavergne and right on Harrison. Bowdery also told Detective Gonzalez that defendant was wearing a black baseball cap and dark clothes at the time of the shooting, and that Bowdery's friends who also witnessed the shooting were "afraid to talk" to police.

¶ 10 Patrick Carter testified that at around 10:30 p.m. on June 10, 2006, he was walking around the neighborhood with several friends, including Samuels and Williams. As they walked down Adams Street, Carter saw defendant and codefendant, both of whom he had known for almost 18 years, standing near a red car. Later, as the group continued walking, Carter saw codefendant driving around the neighborhood in the same red car with defendant in the front passenger seat. Defendant was wearing a white hat, a white shirt, and blue pants. The group, which now included Lavonte Moore, walked to Williams' house at Congress and Lavergne, where they stood outside talking until well after midnight.

¶ 11 At about 1:30 a.m. on June 11, 2006, Carter noticed that a motion sensor light illuminated across the street on the other side of Congress. When he looked in the direction of that light, he saw defendant emerge from the gangway and fire a gun at the group. Carter heard approximately 10 gunshots and ran. When the shooting stopped, he returned to where the group had been standing and saw the same red car from earlier "[t]urn out the alley;" however, he could not see at this time who was in the car. After Carter noticed that Samuels and Williams had been shot, the police arrived. Carter did not speak to the police because it "just ain't something I do." Instead, he rode in an ambulance with Samuels to the hospital.

¶ 12 Carter admitted that he has been convicted of several crimes, including possession of a controlled substance with intent to deliver and UUWF. He had not seen Bowdery on the night of the shooting, or the red car parked on Congress at the time of the shooting. While he was in custody for an assault charge in late August 2006, he told police what he saw on the night in question and identified both defendant and codefendant from photographic lineups. After speaking to police, Carter's assault charge was eventually "thrown out."

¶ 13 When the State called Lavonte Moore, he indicated that he did not want to testify and he was only present in court because a warrant for his arrest had been issued after he previously failed to appear. Moore testified that he only "vaguely" remembered what happened on the night in question. That night, he was with a group of friends, including Williams and Samuels. At about 11 p.m., he left them to buy cigarettes, but eventually met with them again as they walked around the neighborhood. A while after they arrived at Williams' house on Lavergne and Congress, Moore heard gunshots and everyone ran inside. Moore went home and then left for out of town the next day. Moore initially testified that he did not see a red car that evening, but later he admitted that had seen a red car a couple times that day driving around the neighborhood. He could not see who was inside the car, or who fired the shots because it was too dark for him to see anything. He did not identify defendant or codefendant from photographs, and did not see Bowdery or his group of friends, a white van or a red car on the scene at the time of the shooting.

¶ 14 Moore then testified that when he met with police and an Assistant State's Attorney (ASA) in November 2006, he provided a statement to the ASA about the night in question. The ASA wrote out his statement and Moore signed the bottom of each page. After initially claiming that he never read the statement, Moore later admitted that the ASA read every page to him at their meeting and that it summarized what he had told the ASA. According to the statement,

when Moore heard the gunshots, he looked in their direction and saw defendant pointing a gun at his group of friends. However, at trial, Moore testified that some of his statements were false. When asked to specify what was false, Moore responded that the portion of his statement wherein he told the ASA that he saw defendant with the gun was not true.

¶ 15 Moore acknowledged that he had testified about the incident before a grand jury, but he could only "vaguely" recall his testimony. Moore was presented with his grand jury testimony that: he heard the gunshots, looked in their direction and saw defendant pointing a gun at the group gathered in front of Williams' house; he had seen the red car coming from an alley earlier in the evening when he was walking toward Congress and Lavergne; and he saw the car pass the group and noted that defendant was in the passenger seat and codefendant was on the driver's side. At the grand jury hearing, Moore also identified photographs of defendant and codefendant, stating that he had known them for 15 years. When presented with this grand jury testimony at trial, Moore responded that he was not sure if he saw defendant on the day in question, he never identified him or codefendant from any photographs, and that he only told the grand jury what the police had told him to say. However, Moore admitted that the police and the ASA treated him well and fairly and they did not force or threaten him when he provided his statements and testimony. Moore had a prior conviction for possession of a controlled substance.

¶ 16 ASA Alexander Vroustouris testified that in November 2006, he interviewed Moore at the police station. Moore agreed to speak to him and allowed him to transcribe his statement regarding the night in question. Moore told ASA Vroustouris that he saw the red car driving around the neighborhood earlier that evening and that defendant and codefendant were the passenger and driver, respectively. When the group heard gunshots at Congress and Lavergne, Moore looked in the direction of the shots and saw defendant pointing a gun in the direction of

the group. After ASA Vrousouris read Moore's statement to him and gave him the opportunity to make changes or corrections, Moore made a few corrections and then signed the bottom of each page. ASA Vroustouris also verified with Moore that he had been treated well by police and that he had given his statement voluntarily.

¶ 17 After the State rested its case-in-chief, defendant called Quentin Hall, an investigator for the Cook County Public Defender's Office, who had interviewed Bowdery in October 2007. Hall testified that although Bowdery was "reluctant" to talk to him, when Hall asked him about the incident, Bowdery responded that he was not there at the time and had not seen defendant firing shots or codefendant driving a car. On cross-examination, Hall testified that his interview with Bowdery was brief and that he did not take notes. Bowdery repeatedly told Hall that he did not "want to have anything to do with this," and he had not signed the report, which Hall wrote from memory.

¶ 18 Camilla Tillman, defendant's cousin, testified that defendant, his girlfriend and their baby were living with her and they were home on June 10, 2006, when she arrived at about 11 or 11:30 p.m. They then talked and played cards until 2 or 2:30 a.m. when she went to bed and she saw defendant the next morning, when they all heard about the shooting. Camilla Tillman believed another of her cousins had borrowed defendant's red car on the night of the shooting, as she had seen this cousin drive the car in the past. Camilla Tillman admitted that she did not see the car when she arrived home on the evening of June 10, 2006. When she learned that defendant had been charged in this case, she did not contact police to say he was at home with her at the time of the shooting.

¶ 19 In March 2010, the jury found defendant guilty of first-degree murder, personally discharging a firearm that caused Samuels's death, and three counts of aggravated discharge of a firearm, with respect to Carter, Thurman, and Williams.

¶ 20 Defendant filed a "motion for a judgment notwithstanding the verdict, or, in the alternative, motion for a new trial," which the court denied.

¶ 21 The trial court sentenced defendant to 30 years' imprisonment for first-degree murder and 25 years for the firearm sentencing enhancement, which would run concurrently with five-year terms for each of defendant's three aggravated discharge of a firearm convictions.

¶ 22 On direct appeal, we affirmed defendant's conviction and held that the trial court did not abuse its discretion in granting the State's petition to extend defendant's speedy trial term; the evidence presented at trial was sufficient to support defendant's convictions beyond a reasonable doubt; the State's remarks during closing argument did not deprive defendant of a fair trial; and there was no error in the admission of testimony from Samuels's mother. *Tillman*, 2013 IL App (1st) 101487-U.

¶ 23 On March 7, 2014, defendant mailed a *pro se* postconviction petition, alleging, in relevant part, that he received ineffective assistance of trial counsel and that he stated a claim of actual innocence based on newly discovered evidence. The petition was marked received on March 27, 2014.

¶ 24 Defendant maintained that his trial counsel was ineffective for failing to "investigate, interview, contact, or call to testify potential witnesses Michael Flowers, Norman Marsh, and Jermaine Mansfield." He alleged that trial counsel was aware of these witnesses prior to trial through "police reports, discovery as well as witness statements and testimony." According to the petition, defendant "believe[d]" that Flowers would have testified that codefendant and

Carter were "involved in an altercation" prior to the shooting and "possibly" could have put codefendant "on the scene as being the shooter." Further, Marsh and Mansfield would have testified that they were not standing on the corner of Congress and Laverne with Bowdery at 1:00 a.m. on the day in question, they did not witness the shooting, and were not afraid to testify. Defendant stated that he tried to obtain affidavits from Flowers, Marsh, and Mansfield, "but was unable to do so because he is incarcerated and indigent, and unable to locate [their] current address[es] without assistance from the court."

¶ 25 Defendant's postconviction petition also alleged a claim of actual innocence based on an affidavit from Armond Williams, dated June 25, 2013. According to the affiant, while he and codefendant were incarcerated together in 2009, codefendant told him that defendant was not present when the shooting occurred but that defendant was charged with the murder because his car was observed at the scene. Codefendant did not say that he was the shooter, but he did say that he went to the scene in defendant's car that night to "settle the score" with someone.

¶ 26 The trial court summarily dismissed defendant's *pro se* postconviction petition.

¶ 27 In this appeal, defendant first maintains that his petition stated the gist of an ineffective assistance of counsel claim for trial counsel's failure to investigate and call Marsh, Mansfield, and Flowers as witnesses. Where, as here, a postconviction petition does not implicate the death penalty, a circuit court adjudicates the petition in three distinct stages. *People v. Hodges*, 234 Ill. 2d 1, 10 (2009). At the first stage, the circuit court examines the petition taking all well-pled facts and accompanying affidavits as true (*People v. Peeples*, 205 Ill. 2d 480, 510 (2002)) to determine whether "the petition is frivolous or is patently without merit" (*Hodges*, 234 Ill. 2d at 10). Review of a circuit court's dismissal of a postconviction petition at the first stage is *de novo*. *Hodges*, 234 Ill. 2d at 9.

¶ 28 Section 122-2 of the Act provides that a postconviction 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 2014). The Act requires these materials in order to ensure that the allegations in the petition are capable of objective or independent corroboration. *People v. Delton*, 227 Ill. 2d 247, 254 (2008). Where a defendant does not attach the necessary affidavits, records, or other evidence or explain their absence, summary dismissal of the defendant's postconviction petition warranted. *Id.* at 255; *People v. Collins*, 202 Ill. 2d 59, 66 (2002).

¶ 29 Our supreme court has specifically held that "[a] claim that trial counsel failed to investigate and call a witness must be supported by an affidavit from the proposed witness." *People v. Enis*, 194 Ill. 2d 361, 380 (2000). The *Enis* court explained that "[i]n the absence of such an affidavit, a reviewing court cannot determine whether the proposed witness could have provided testimony or information favorable to the defendant, and further review of the claim is unnecessary." *Id.* Here, as in *Enis*, we are unable to determine whether the proposed witnesses could have provided testimony or information favorable to the defendant based on what defendant "believe[s]" their testimony would have been. Accordingly, the lack of affidavits from the potential witnesses defeats the claim in defendant's postconviction petition that trial counsel was ineffective for failing to investigate or call these individuals. See *People v. Harris*, 224 Ill. 2d 115, 142 (2007) (affirming summary dismissal of postconviction petition making similar claim that was only supported by the defendant's affidavit and not that of the potential witness).

¶ 30 We are mindful of defendant's contention that his petition adequately explained the absence of the affidavits such that he satisfied the Section 122-2 requirement. In his petition, defendant asked the circuit court to excuse him from providing the affidavits by stating that he

tried to obtain affidavits from Flowers, Marsh, and Mansfield, "but was unable to do so because he is incarcerated and indigent, and unable to locate [their] current address[es] without assistance from the court." We note that the Act applies only to individuals who are "imprisoned in the penitentiary" but nevertheless includes that affidavit requirement. 725 ILCS 5/122-1, 122-2 (West 2014). Because the Act contemplates that defendants seeking postconviction relief are likely to be imprisoned, the fact of incarceration, without more, does not adequately explain defendant's failure to obtain affidavits from any of the potential witnesses. Here, defendant did not describe any efforts that he made to obtain the necessary affidavits or any unsuccessful attempts he made to acquire them. Defendant's argument is unpersuasive.

¶ 31 Even if defendant's explanation for his failure to attach the requisite affidavits were sufficient, we would nevertheless affirm the circuit court's dismissal of his ineffective assistance of trial counsel claim. A petition seeking postconviction relief for a denial of constitutional rights may be summarily dismissed as frivolous or patently without merit only if the petition has no arguable basis either in law or in fact. *Hodges*, 234 Ill. 2d at 11-12; *People v. Tate*, 2012 IL 112214, ¶¶ 9-12. A petition has no arguable basis in law when it is premised on "an indisputably meritless legal theory," such as a legal theory that the record contradicts. *Hodges*, 234 Ill. 2d at 16. A petition has no arguable basis in fact when it is founded on a "fanciful factual allegation," including factual claims that are "fantastic or delusional" or belied by the record. *Id.* at 16-17; *People v. Morris*, 236 Ill. 2d 345, 354 (2010).

¶ 32 To prevail on a claim of ineffective assistance of counsel, a defendant must show that: (1) the representation fell below objective standards of reasonableness; and (2) there is a reasonable probability that, but for the deficient performance, the outcome of the proceeding would have been different. *People v. Hall*, 217 Ill. 2d 324, 335 (2005) (citing *Strickland v. Washington*, 466

U.S. 668, 687 (1984)). Failure to establish either *Strickland* prong disposes of a defendant's claim. *People v. Henderson*, 2013 IL 114040, ¶ 11. Generally, decisions concerning what witnesses to call are considered to be matters of trial strategy that are immune from ineffective assistance of counsel claims. *Enis*, 194 Ill. 2d at 378. However, because our supreme court has held that arguments related to trial strategy are "inappropriate for the first stage" of post-conviction proceedings (see *Tate*, 2012 IL 112214, ¶ 22), we proceed with the prejudice prong.

¶ 33 "Whether the failure to investigate constitutes ineffective assistance of counsel is determined by the value of the evidence not presented at trial and the closeness of the evidence that was presented at trial." *People v. Harmon*, 2013 IL App (2d) 120439, ¶ 26 (citing *People v. Montgomery*, 327 Ill. App. 3d 180, 185 (2001)).

¶ 34 Defendant contends that Norman Marsh and Jermaine Mansfield would have rebutted testimony from Detective Gonzales that Bowdery told the detective he was with "Jermaine KP, Norm" at the time of the shooting but they were afraid to talk about the incident. Defendant argues that he established prejudice because, with the benefit of Marsh and Mansfield's testimony, the jury arguably might have disbelieved all of Bowdery's testimony. Defendant also maintains that Flowers's testimony regarding an altercation between codefendant and Carter prior to the shooting would have provided a motive for someone other than defendant to have been the shooter. Further, Flowers "possibly" could have placed codefendant on the scene as the shooter.

¶ 35 In his direct appeal, we "determined that the evidence overwhelmingly supported defendant's convictions and was not closely balanced." *Tillman*, 2013 IL App (1st) 101487-U, ¶ 79. This conclusion strongly undercuts defendant's ability to establish prejudice.

¶ 36 Regarding the value of the evidence not presented, the record reflects that trial counsel presented the jury with several challenges to Bowdery's credibility. Counsel elicited testimony that Bowdery had prior drug convictions for possession and possession with intent to deliver, and that he pled guilty to the narcotics charge for which he was taken into custody on July 19, 2006, but that this charge was eventually "dropped." Counsel called an investigator for the Cook County Public Defender's Office, who testified that in an interview in October 2007, Bowdery stated that he was not present during the shooting and he had not seen defendant firing shots or codefendant driving a car. In her closing argument, counsel highlighted that Bowdery waited until July 2006, when he was in jail on a drug arrest, to talk to police and argued that he only spoke about the incident to gain favor with the police and have his pending charge dropped. Despite the challenges to Bowdery's credibility that defense counsel presented at trial, the jury found defendant guilty. Accordingly, taking defendant's contentions regarding Marsh and Mansfield's potential testimony as true, we find that defendant did not show he was arguably prejudiced without their potential testimony.

¶ 37 Defendant also asserts that trial counsel was ineffective for failing to call Flowers, who he believes could have testified that codefendant and Carter were involved in an altercation prior to the shooting and "possibly" would have put codefendant "on the scene as being the shooter." The value of testimony regarding the "altercation" which allegedly occurred "prior" to the shooting is diminished by the testimony from several witnesses that defendant and codefendant were driving around together prior to the shooting. Nor do we find defendant's "belie[f]" that Flowers "possibly" could place codefendant on the scene as the shooter to be material. A witness for the defense testified that defendant was at home when the shooting took place and, as we found in defendant's direct appeal, the evidence at trial "clearly prove[d]" that "on the night in

question: Bowdery, Carter and Moore saw defendant approach the group standing on Congress in front of Williams' house with a gun and shoot at them some 10 times, striking the victim, killing her, and wounding two others." *Tillman*, 2013 IL App (1st) 101487-U, ¶¶ 21, 61. Accordingly, defendant cannot show that he was prejudiced by trial counsel's alleged failure to investigate or call Flowers, Mansfield, or Marsh and his first contention on appeal fails.

¶ 38 Defendant's second contention in this appeal is that he stated an arguable claim of actual innocence based on an affidavit from Armond Williams dated June 25, 2013. According to the affiant, while he and codefendant were incarcerated together in 2009, codefendant told him that defendant was not present when the shooting occurred but that defendant was charged with the murder because his car was observed at the scene. Codefendant did not say that he was the shooter, but he did say that he went to the scene in defendant's car that night to "settle the score" with someone. The affiant told defendant about codefendant's statements in June 2013.

¶ 39 "An actual-innocence claim should be treated procedurally like any other postconviction claim." *People v. Coleman*, 2013 IL 113307, ¶ 92; see also *People v. Sparks*, 393 Ill. App. 3d 878, 884 (2009) (where a defendant claims he set forth the gist of a meritorious claim of actual innocence based on newly discovered evidence, the question before the appellate court is whether the petition had no arguable basis either in law or in fact). A freestanding claim of actual innocence in a postconviction petition must be based on new evidence discovered after trial that is material and noncumulative. *People v. Ortiz*, 235 Ill. 2d 319, 333-34 (2009). Additionally, the evidence must be so conclusive in character that it would probably alter the result on retrial. *Id.* at 334; *Coleman*, 2013 IL 113307, ¶ 96. An actual innocence claim does not merely question the defendant's guilt. *People v. Wallace*, 2015 IL App (3d) 130489, ¶ 17. "Rather, the hallmark of

'actual innocence' means 'total vindication,' or 'exoneration.'" *People v. Collier*, 387 Ill. App. 3d 630, 636 (2008) (quoting *People v. Savory*, 309 Ill. App. 3d 408, 414-15 (1999)).

¶ 40 The purpose of the Act's affidavit requirement is to "'establish that a petition's allegations are capable of objective or independent corroboration'" such that an evidentiary hearing would be a worthwhile undertaking. *Coleman*, 2012 IL App (4th) 110463, ¶ 53 (quoting *Hodges*, 234 Ill. 2d at 10). Therefore, this court has held that "the affidavits should 'be made on the personal knowledge of the affiants' and should 'affirmatively show that the affiant, if sworn as a witness, [could] testify competently thereto.'" *Id.* (quoting Ill. S.Ct. R. 191(a) (eff. July 1, 2002)). As such, hearsay generally cannot be the basis for a defendant's postconviction claim. *Wallace*, 2015 IL App (3d) 130489, ¶ 25.

¶ 41 Here, Armond Williams has no personal knowledge of the incident codefendant told him about and his testimony as to the potential contents of codefendant's testimony would be objectionable as speculation and hearsay. See *Coleman*, 2012 IL App (4th) 110463, ¶ 55. In light of the overwhelming evidence of defendant's guilt, and taking as true the assertions of which the affiant has personal knowledge, we do not find that the affidavit is of such a conclusive character that it would probably change the result at trial. See *Wallace*, 2015 IL App (3d) 130489, ¶¶ 25-29 (affirming summary dismissal of the defendant's postconviction petition alleging actual innocence based on an affidavit from an inmate incarcerated with the declarant, which averred that the declarant confessed that he was the shooter). Accordingly, we need not discuss whether the information in the affidavit constituted new evidence or whether it was material and noncumulative. Defendant's actual innocence-based claim fails.

¶ 42 For the reasons stated, we affirm the judgment of the circuit court of Cook County.

¶ 43 Affirmed.