

2018 IL App (1st) 153547-U

No. 1-15-3547

Order filed June 1, 2018

Sixth Division

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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. 98 CR 3873
)	
RICKEY ROBINSON,)	Honorable
)	Carol M. Howard,
Defendant-Appellant.)	Judge, presiding.

JUSTICE CONNORS delivered the judgment of the court.
Presiding Justice Hoffman and Justice Cunningham concurred in the judgment.

ORDER

¶ 1 *Held:* We affirm the judgment of the circuit court denying defendant leave to file a successive postconviction petition. Defendant failed to raise a colorable claim of actual innocence because defendant's proffered affidavits were not of such a conclusive nature as to probably change the result of the case on retrial.

¶ 2 Defendant Rickey Robinson appeals from an order of the circuit court of Cook County denying leave to file a successive petition for relief under the Post-Conviction Hearing Act (Act)

(725 ILCS 5/122-1 *et seq.* (West 2014)).¹ Following a bench trial, defendant was found guilty of first degree murder, aggravated vehicular hijacking, armed robbery, and concealment of a homicidal death relating to the shooting death of Nicole Giles.² He was sentenced to natural life imprisonment for first degree murder, a consecutive 30-year term for armed robbery, a concurrent 30-year term for aggravated vehicular hijacking, and a consecutive 5-year term for concealment of a homicidal death. We affirmed defendant's convictions and sentence on direct appeal. See *People v. Robinson*, 1-00-2981 (2002) (unpublished order under Supreme Court Rule 23). This court further affirmed the second-stage dismissal of defendant's initial postconviction petition under the Act. See *People v. Robinson*, 2015 IL App (1st) 123360-U.

¶ 3 The circuit court denied defendant's motion for leave to file a successive postconviction. Defendant appeals, arguing that his petition raised a colorable claim of actual innocence based on the attached affidavits of Andre Mamon, Donald Shaw, and Tavares Hunt-Bey demonstrating the shooting was committed by another person.³ For the reasons set forth below, we affirm.

¶ 4 At trial, Anjanette Vance and Lavell Rogers testified that, on December 28, 1997, shortly before 5 p.m., they were traveling in a car in the vicinity of 88th Street and Kingston Avenue. Under a viaduct, they observed an individual exit the front passenger's seat of a car and shoot a person, who was sitting on the ground near the car. Another individual was standing near the person who had been shot. The shooter then retrieved a plastic bag and placed it over the

¹ Defendant's name is spelled variously as "Ricky" and "Rickey" throughout the record and in the parties' briefs. We will adopt the spelling "Rickey" contained within defendant's *pro se* proposed successive postconviction petition and notice of appeal.

² Defendant was charged along with codefendants Marques Northcutt and Peter Ganaway, and the matter proceeded to severed, simultaneous bench and jury trials. Northcutt and Ganaway are not parties to this appeal.

³ Defendant argued in his petition that his claim of actual innocence is also supported by the affidavit of Yasmyn Johnson. However, on appeal, defendant abandons this issue and it is thus forfeited. See *People v. Hall*, 2014 IL App (1st) 122868, ¶ 7.

victim's head. Both offenders put the victim into the backseat of the car. Vance and Rogers were able to track down a police officer and, when they returned to the scene of the shooting with the officer, saw blood on the ground. The entire incident lasted about 30 seconds, and Vance and Rogers could not make out the faces of the offenders.

¶ 5 At the scene, officers recovered a spent shell casing and blood samples. A forensic scientist testified the blood samples matched Giles's blood.

¶ 6 D'Andre Weaver testified that, on December 29, 1997, around 11:45 a.m., he saw two men exit a red Chevrolet with a gas can and walk down an alley. A few moments later, they ran back to the Chevrolet with the gas can and sped off. Weaver was unable to see the men's faces. Between 5 to 10 minutes later, Weaver heard the sirens of police and fire engines and saw smoke coming from the alley.

¶ 7 That same day, police responded to a call of a dumpster fire in an alley in a residential area. A body, later determined to be Giles, was found burning in a dumpster. The car belonging to Giles was later discovered abandoned in Homewood, Illinois. It contained, in the backseat, a large amount of Giles's blood and a bloody plastic bag.

¶ 8 Sherrilyn Bivens, Giles's mother, testified that Giles was supposed to pick her up from work at 6 p.m. on December 28, but did not show up. Bivens called Elise Reed, Giles's friend, to ask if she had heard from Giles. Reed told her that Giles had spoken with defendant, who wanted Giles to stop by his friend's house. Bivens went to defendant's house and spoke with him. Defendant initially denied speaking with Giles but later stated he did, in fact, speak with her. Defendant stated that Giles "never showed up" to meet him.

¶ 9 Reed testified that she was on a three-way phone conversation with Giles and defendant on December 28. According to Reed, defendant asked Giles to stop at his house before coming to pick up Reed. When Giles did not arrive to pick up Reed, Reed called defendant to ask if he had seen Giles. Defendant responded that Giles did not show up at his house, and he then hung up the phone.

¶ 10 The police later recovered Giles's pager and ammunition of the same type as the shell casing recovered at the scene of the shooting from Leonard Tucker's bedroom.

¶ 11 Tucker testified that he was the boyfriend of defendant's sister and, on December 28, 1997, was present at defendant's house and had a conversation with defendant, Peter Ganaway, and Marques Northcutt about Giles. When Tucker and defendant were alone, defendant told Tucker that he had killed "her." Tucker asked who he was referring to, and defendant responded, "Nicole." Tucker initially did not believe defendant, but defendant responded, "[t]hat's on stone," meaning that it was the truth.

¶ 12 Tucker further testified that defendant told him that he had jumped out of a car and shot Giles in the head. Defendant stated that he, Ganaway, and Northcutt dumped her body in a garbage can and had dropped the gun off on a street. Tucker later left defendant's house and, as he was walking home, Ganaway approached and asked Tucker to hold onto a green pager. About 10 minutes later, Ganaway arrived at Tucker's house and asked him to hold onto a box of AK-47 ammunition. Tucker put the ammunition and pager in his bedroom.

¶ 13 The next morning, Tucker was at defendant's house when defendant and Ganaway arrived. Defendant was carrying a gas can and stated, "It's done. [W]e did it. [W]e burned her

body.” A week after the murder, police came to Tucker’s school and took him to the police station. After being questioned about the ammunition and pager, Tucker spoke with the police.

¶ 14 Maisha Muhammad testified that she is the best friend of defendant’s sister. On December 29, 1997, she received a phone call from defendant’s sister, who asked her to get her grandmother’s car and come over. Muhammad arrived at defendant’s house in her grandmother’s burgundy, four-door Corsica. Muhammad agreed to drive defendant and Ganaway, and noticed defendant was carrying a gas can. They first stopped at a gas station and defendant left the car holding the gas can. After defendant returned, they drove around for several blocks “under the viaduct area.” Eventually, defendant told her to stop, and he and Ganaway got out of the car with the gas can and walked down an alley. About 5 to 10 minutes later, defendant and Ganaway jogged back to the car and told her to drive back to defendant’s house. When they returned to defendant’s house, defendant told Muhammad that they had burned Giles’s body.

¶ 15 Michelle McClendon, defendant’s girlfriend at the time of the incident, testified that she was at Northcutt’s house on December 29, 1997, with Ganaway, Northcutt, and defendant. McClendon overheard defendant and Ganaway telling Northcutt how they had burned Giles’s body. Specifically, they stated that they had gotten gasoline, soaked a bandanna in gasoline, and lit the garbage can containing Giles’s body on fire. Later that evening, defendant told McClendon that he, Northcutt, and Ganaway snuck a gun into Giles’s car, and one of the men told Giles that he had to use the bathroom. When Giles pulled over to let the man use the bathroom, defendant shot her in the head.

¶ 16 The next day, McClendon saw a news report and began to believe defendant and the others were telling the truth. At trial, McClendon identified a picture of a rifle and testified that she had observed that weapon in defendant's house within a month before Giles's murder.

¶ 17 Detective Michael McDermott testified that he spoke with defendant at the police station after providing him with his *Miranda* rights. Defendant stated that he spoke with Giles, who indicated that she wanted to stop by defendant's house. When Giles did not arrive, defendant called a friend to drive him, Ganaway, and Northcutt to "Kevin's" house. Later, he had McClendon pick up him, Ganaway, and Northcutt and drive them to defendant's grandmother's house.

¶ 18 After speaking with Ganaway and defendant a few more times, McDermott and Ganaway went to an alley in the 8900 block of South Bennett. There, Ganaway retrieved a rifle. The rifle could not be matched to the spent shell casing found under the viaduct at the scene of the shooting.

¶ 19 McDermott again spoke with defendant and told him the nature of the investigation and that officers had recovered the gun. Defendant made a statement admitting to shooting and robbing Giles.

¶ 20 Assistant State's Attorney John Karnezis testified that defendant agreed to give a court-reported statement. At trial, Karnezis read into the record defendant's 70-page statement. We summarized defendant's statement in the order on direct appeal and repeated it in our decision affirming the dismissal of defendant's initial postconviction petition. The summary is as follows:

“ ‘The evidence at trial included defendant's court reported statement which indicated that sometime prior to December 28, 1997, he and two codefendants, Marques

Northcutt and Peter Ganaway, decided to rob Nicole Giles (the victim) because they believed she would have a large sum of money on her. They then decided that, because she knew them, they would also kill her. The three formulated a plan for carrying out the crime and then put it into action. On December 28, 1997, pursuant to the plan, defendant contacted the victim and asked her to come over. The three men entered the victim's vehicle. While the victim was driving, Northcutt indicated that he had to urinate. The victim stopped under a viaduct and Northcutt exited the car. Ganaway pulled the victim out of the car and defendant shot her in the head. A bag was placed over the victim's head and she was pushed back into the car. Defendant and codefendants removed \$50 from the victim's pocket and placed her into a garbage can. They then ditched the car. The next day after learning that fingerprints can be left on clothing, defendant and Ganaway returned to the garbage can. Ganaway poured gasoline into the can. Defendant lit a bandana soaked with gasoline and threw it into the can.' ” *Robinson*, 2015 IL App (1st) 123360-U (quoting *People v. Robinson*, 1-00-2981 (2002) (unpublished order under Illinois Supreme Court Rule 23)).

¶ 21 The trial court found defendant guilty of first degree murder, aggravated vehicular hijacking, armed robbery, and concealment of a homicidal death. He was sentenced to natural life imprisonment for first degree murder, a consecutive 30-year term for armed robbery, a concurrent 30-year term for aggravated vehicular hijacking, and a consecutive 5-year term for concealment of a homicidal death. On direct appeal, we affirmed his convictions and sentence. See *Robinson*, 1-00-2981 (2002) (unpublished order under Illinois Supreme Court Rule 23).

¶ 22 Defendant filed a *pro se* petition under the Act raising various claims of ineffective assistance of counsel. Counsel was appointed but defendant later chose to proceed *pro se*. The circuit court found defendant failed to make a substantial showing of a constitutional violation and dismissed defendant's petition. This court affirmed the second-stage dismissal of defendant's petition. See *Robinson*, 2015 IL App (1st) 123360-U.

¶ 23 On May 8, 2015, defendant filed a motion for leave to file a successive postconviction petition under the Act, wherein he alleged, *inter alia*, a claim of actual innocence. Specifically, he asserted that Tucker was the actual murderer of Giles and that he was not involved. In support, defendant included his own affidavit as well as affidavits of four witnesses: Yasmyn Johnson, Donald Shaw, Tavares Hunt-Bey, and Andre Mamon. On appeal, defendant only relies on the affidavits of Mamon, Shaw, and Hunt-Bey.

¶ 24 In defendant's affidavit, he stated that he and Tucker were members of different sects of the Black P. Stones. Defendant met a woman named "Allison" and her cousin, Giles, who became friends with defendant. Giles helped defendant move guns between both sects of the gang. At some point, Giles told defendant in the presence of Tucker that her cousin "Jerry," a member of a rival gang, would give her money. This information "rubbed [Tucker] the wrong way," and Tucker viewed Giles as "bait" to get to the rival gang. On the date of Giles's murder, defendant contacted Giles for assistance in moving weapons. Defendant remained at his home with Northcutt and Ganaway but had to leave to go on a date with a woman. After the date, defendant returned home and learned from Northcutt and Ganaway that the weapons were moved to where they needed to be. Defendant spent the night at another woman's home and had

no knowledge that Giles was killed and her body burned. Defendant explained that there was a law within the Black P. Stones that no member would cooperate with police against a “brother.”

¶ 25 In Johnson’s affidavit, she stated that, on December 28, 1997, she was at her sisters’ apartment with defendant, who was her boyfriend at the time. It was getting dark outside, and she and defendant stayed at the apartment for one to two hours.

¶ 26 In Shaw’s affidavit, dated March 5, 2015, he avers that, on December 28, 1997, he observed a dark-colored Ford Contour stop near 8918 South Bennett Avenue. The vehicle contained “three guys that hung with Rickey,” including a man named “Lenny.” One man exited the car with an “AK type” assault rifle and ran between the gangway on the other side of the alley towards Constance Avenue. About one to two minutes later, the man returned without the gun and entered the backseat of the car. Defendant was not in the Contour with Lenny.

¶ 27 Shaw recently spoke with an acquaintance, who told him there was information on Facebook regarding defendant. This information prompted Shaw to recall the events of the night of December 28, 1997, and it “did not dawn on [Shaw] that this information could and would have been helpful.”

¶ 28 In Hunt-Bey’s affidavit, dated April 25, 2014, he avers that, on the morning of December 29, 1997, he spoke with Leonard “Lenny” Tucker at a gas station near the corner of 87th Street and Exchange Avenue. Tucker told him that he killed a woman the night before under a viaduct on South Chicago and had to “tie up loose ends.” Tucker filled a container with gasoline and drove away with two unknown men. Hunt-Bey knew defendant “was taking the rap for Lenny” but because of the gang “code of silence,” Hunt-Bey could not snitch on a fellow gang member.

¶ 29 In Mamon's affidavit, dated December 19, 2014, he avers that, in December 1997, he observed a man named "Lenny" and two unknown men by a viaduct on South Chicago Avenue. He then saw a bright flash and heard a loud gunshot. Lenny placed an "A.K." in the backseat of a car and drove away with the two men. In August 2014, Mamon spoke with an individual on the phone, who asked whether Mamon knew a "Ricky." The caller explained that "Ricky" had been "locked up" for a murder on South Chicago for a long time, but Mamon did not know defendant as "Ricky" because he went by a nickname. Later, while incarcerated, Mamon met defendant in prison and asked him "if he had a murder that happened under a viaduct right off South Chicago." Mamon did not see defendant under the viaduct the night of the incident and averred that "[defendant's] face wasn't one of the faces [he] saw that night."

¶ 30 The circuit court, in a written order, denied defendant leave to file a successive postconviction petition on October 2, 2015. The court reasoned, *inter alia*, that while the affidavits of Shaw, Hunt-Bey, and Mamon were newly discovered and material evidence, they were not of such a conclusive character as to probably change the outcome on retrial. The court noted that Shaw did not witness the murder occur and could not testify that defendant was not present when the murder occurred or when Giles's body was burned. With respect to Hunt-Bey, the court found that any testimony regarding the statement made by Tucker confessing to the crime would be inadmissible hearsay. Further, Hunt-Bey did not witness the murder and subsequent burning of the body. Finally, Mamon's affidavit does not state he witnessed the murder himself, who had shot Giles, or who had burned the body. Accordingly, the court concluded, defendant failed to raise a colorable claim of actual innocence. Defendant filed a timely notice of appeal.

¶ 31 On appeal, defendant argues the circuit court erred in denying him leave to file a successive postconviction petition under the Act where he raised a colorable claim of actual innocence. Specifically, he asserts that the affidavits of Shaw, Hunt-Bey, and Mamon are newly discovered, material and non-cumulative, and are of such a conclusive nature as to probably change the outcome on retrial as required to raise a colorable claim of actual innocence. He further asserts the circuit court made several errors in denying him leave to file a successive postconviction petition.

¶ 32 The Act provides a procedural mechanism for a defendant to assert a substantial denial of his constitutional rights in the original trial or sentencing. 725 ILCS 5/122-1 (West 2014); *People v. Allen*, 2015 IL 113135, ¶ 20. Where a defendant previously appealed a judgment of conviction, “the ensuing judgment of the reviewing court will bar, under the doctrine of *res judicata*, postconviction review of all issues actually decided by the reviewing court, and any other claims that could have been presented to the reviewing court will be deemed waived.” *People v. Edwards*, 2012 IL 111711, ¶ 21.

¶ 33 Generally, the Act contemplates the filing of only one petition for postconviction relief. 725 ILCS 5/122-1(f) (West 2014). A petitioner must first obtain leave of court to file a successive petition before the claims in a successive petition can be considered. *People v. Miranda*, 2018 IL App (1st) 170218, ¶ 24. A successive postconviction petition may only be considered when a defendant (1) establishes “cause and prejudice” for the failure to raise the claim sooner, or (2) makes a claim of actual innocence. *People v. Ortiz*, 235 Ill. 2d 319, 329-30 (2009). Leave to file a successive postconviction petition will be denied where “it is clear, from a review of the successive petition and the documentation submitted by the petitioner, that the

claims alleged by the petitioner fail as a matter of law or where the successive petition with supporting documentation is insufficient to justify further proceedings.” *People v. Smith*, 2014 IL 115946, ¶ 35.

¶ 34 Defendant’s proposed successive postconviction petition raises a claim of actual innocence. To succeed on a claim of actual innocence, a petitioner must present evidence that is (1) newly discovered, (2) material and noncumulative, and (3) of such a conclusive character that it would probably change the result on retrial. *People v. Jones*, 2017 IL App (1st) 123371, ¶ 43. These claims “must be supported ‘with new reliable evidence—whether it be exculpatory scientific evidence, trustworthy eyewitness accounts, or critical physical evidence—that was not presented at trial.’ ” *Edwards*, 2012 IL 111711, ¶ 32 (quoting *Schlup v. Delo*, 513 U.S. 298, 324 (1995)).

¶ 35 “An actual innocence claim does not merely challenge the strength of the State’s case against the defendant.” *People v. Evans*, 2017 IL App (1st) 143268, ¶ 30. That is, the sufficiency of the evidence presented by the State is not at issue in a postconviction proceeding. *Id.* Rather, “the hallmark of ‘actual innocence’ means ‘total vindication,’ or ‘exoneration.’ ” *People v. Collier*, 387 Ill. App. 3d 630, 636 (2008) (citing *People v. Savory*, 309 Ill. App. 3d 408, 414-15 (1999)). We review *de novo* a trial court’s ruling denying a motion for leave to file a successive postconviction petition. See *People v. Warren*, 2016 IL App (1st) 090884-C, ¶¶ 74-75; *Miranda*, 2018 IL App (1st) 170218, ¶ 22.

¶ 36 Here, even assuming that the attached affidavits of Shaw, Mamon, and Hunt-Bey are newly discovered and material and noncumulative, they are not of such a character as to probably change the result on retrial. As our supreme court noted in *People v. Edwards*, 2012 IL

111711, to set forth a colorable claim of actual innocence, a defendant's "request for leave of court and his supporting documentation [must] raise the probability that it is more likely than not that no reasonable juror would have convicted him in the light of the new evidence[.]" *Edwards*, 2012 IL 111711, ¶ 31. Defendant's evidence cannot meet this burden.

¶ 37 In Shaw's affidavit, he contended that he observed "three guys that hung with Rickey," including Tucker, in a dark-colored Ford Contour. One man exited the car with an assault rifle and ran between the gangway on the other side of the alley towards Constance Avenue. The man returned without the gun and entered the backseat of the car. Defendant was not in the car with Tucker.

¶ 38 This evidence would not exonerate defendant. All Shaw saw was someone apparently disposing of a rifle. Shaw was not present at the shooting and did not observe the shooting of Giles or her body being burned. Therefore, Shaw cannot exonerate defendant, but can only provide circumstantial evidence that would, at best, challenge the sufficiency of the evidence to convict defendant. See *People v. Brown*, 2017 IL App (1st) 150132, ¶ 51.

¶ 39 In Mamon's affidavit, he asserted that he saw Tucker and two unknown men by a viaduct on South Chicago. He then observed a bright flash and heard a loud gunshot. Tucker placed a rifle in the backseat of a car and drove away with the two men. Mamon averred that "[defendant's] face wasn't one of the faces [he] saw that night."

¶ 40 However, Mamon does not state that he actually saw the murder take place. He further does not state who shot Giles or that he was present when Giles's body was burned. Rather, he simply avers that Tucker was present under the viaduct with two men, and cannot point to which

individual actually shot Giles and burned her body. Accordingly, this affidavit is not of such a conclusive character as to probably change the result on retrial.

¶ 41 Finally, in Hunt-Bey's affidavit, he asserted that, while at a gas station, Tucker told him that he killed a woman the night before under a viaduct on South Chicago. Tucker further stated he had to "tie up loose ends," filled a container with gasoline, and drove away with two unknown men. Hunt-Bey knew defendant "was taking the rap for Lenny" but because of the gang "code of silence," Hunt-Bey could not snitch on a fellow gang member.

¶ 42 However, similarly to Shaw, Hunt-Bey was not present at the shooting, did not see who shot Giles, and did not see who burned her body. Further, Tucker's inculpatory statement to Hunt-Bey is rebutted by the evidence at trial, which included witness testimony and defendant's own confession. See *Brown*, 2017 IL App (1st) 150132, ¶ 52. Specifically, Muhammad, McClendon, and Tucker all testified that defendant told them that he had killed and burned Giles's body. They further testified to details that matched defendant's own court-reported confession.

¶ 43 In defendant's 70-page court-reported statement, he admitted he shot Giles and burned her body. Defendant stated that he, Northcutt, and Ganaway planned to rob Giles so he contacted her to come over. After she arrived, he entered her vehicle with Northcutt and Ganaway. Ganaway informed Giles he had to urinate. After Giles pulled over, defendant exited the car and shot Giles in the head. They ditched Giles's body in a dumpster. The next day, defendant and Ganaway returned to the dumpster with gasoline and burned Giles's body.

¶ 44 Muhammad testified that she drove defendant to a gas station where defendant filled a gas can. She then drove to an alley where defendant and Ganaway exited her car with the gas can. Later, defendant told Muhammad that he had burned Giles's body.

¶ 45 McClendon testified that defendant told her about his involvement in Giles's murder and the subsequent burning of her body. Defendant also told her he was in Giles's car with Ganaway and Northcutt when one of the men needed to use the bathroom. After Giles pulled the car over under a viaduct, defendant shot her in the head. Later, McClendon overheard defendant and Ganaway telling Northcutt that they had gotten gasoline, soaked a bandana in gasoline, and lit the garbage can containing Giles's body on fire.

¶ 46 Tucker testified that defendant told him that he jumped out of a car, shot Giles in the head, and put her body into a garbage can. The next day defendant had a gas can and said "It's done. [W]e did it. [W]e burned her body."

¶ 47 Muhammad, McClendon, and Tucker all testified to defendant's involvement in Giles's murder and corroborated defendant's own court-reported confession. This evidence overwhelmingly pointed to defendant as the person who murdered Giles and burned her body. Accordingly, the affidavits of Shaw, Mamon, and Hunt-Bey are not of such a conclusive character that they would probably change the result on retrial, as they merely conflict with defendant's confession and other testimony presented at trial. See *People v. Mabrey*, 2016 IL App (1st) 141359, ¶ 30. Given each affidavit's individual deficiencies and in light of the strong evidence of defendant's guilt presented at trial, we cannot find that "no reasonable juror would have convicted him in light of the new evidence[.]" *Edwards*, 2012 IL 111711, ¶ 31. Defendant therefore has failed to present a colorable claim of actual innocence based on these affidavits.

¶ 48 Defendant further contends the circuit court made several errors in denying his motion for leave to file a successive postconviction petition. Specifically, he asserts the court erred when it seemed to suggest circumstantial evidence was insufficient as a matter of law to change the outcome on retrial and when it found that Tucker’s confession to the murder, contained in Hunt-Bey’s affidavit, constituted inadmissible hearsay. We need not determine whether the circuit court’s reasoning was proper. Here, we review the judgment of the lower court *de novo* and may affirm on any basis contained in the record. *Miranda*, 2018 IL App (1st) 170218, ¶ 22; see *People v. Johnson*, 208 Ill. 2d 118, 128-29 (2003) (the reviewing court reviews the correctness of the result of the lower court and not the correctness of its reasoning); *People v. Stoecker*, 384 Ill. App. 3d 289, 294 (2008) (“An appellate court is not constrained by the reasoning of the trial court and may affirm the dismissal of a postconviction petition on any basis supported by the record”). Given our determination that defendant cannot establish a colorable claim of actual innocence, we affirm the court’s denial of leave to file a successive postconviction petition and do not address the correctness of the circuit court’s reasoning.

¶ 49 For the reasons set forth above, we affirm the judgment of the circuit court of Cook County.

¶ 50 Affirmed.