2014 IL App (1st) 122173-U

FIFTH DIVISION
September 12, 2014

No. 1-12-2173

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. 97 CR 11051
	)	
WILLIAM BARFIELD,	)	The Honorable
	)	Vincent M. Gaughan,
Defendant-Appellant.	)	Judge Presiding.

JUSTICE McBRIDE delivered the judgment of the court.
Presiding Justice Palmer and Justice Reyes concurred in the judgment.

O R D E R

¶ 1 *Held*: The trial court's denial of defendant's *pro se* motion for leave to file a successive postconviction petition is affirmed where the affidavit of an additional eyewitness claiming another individual was the shooter was not newly discovered evidence or of such conclusive character that it would probably change the result on retrial.

¶ 2 Defendant, William Barfield, appeals from the trial court's denial of his *pro se* motion for leave to file a successive postconviction petition. He asserts he made a showing of cause and prejudice and set forth a colorable claim of actual innocence through the affidavit of an

eyewitness who named another individual (Warren Barfield) as the shooter. For the reasons that follow, we affirm.

¶ 3 On November 5, 1993, Carlton McDaniel was killed in front of his home at 1700 North Linder.[1] At trial, eyewitnesses identified defendant as the shooter and Warren Barfield, defendant's brother, as the individual who drove to the home and provided defendant with the gun. Additional evidence consisted of an incriminating statement defendant made after being arrested.

¶ 4 At trial, Pearl Harris, McDaniel's aunt and defendant's neighbor, testified she was sitting in her car at approximately 10:45 a.m. on November 5, 1993. McDaniel was standing nearby. A brown Chevy approached and double parked in front of Pearl's car. Defendant's brother, Warren, exited the Chevy and rang the doorbell at 1704 Linder, which was defendant's address. When nobody answered, Warren went around the side of the house and met up with defendant. Warren pulled a gun from his pants and handed it to defendant, who put the gun down his pants and walked toward the front of the house. Defendant continued across the grass, stopping approximately 10 feet from McDaniel and 14 feet from Pearl. From her rearview mirror, Pearl saw defendant pull out the gun, say something to McDaniel, and fire four to six shots at him. Warren then ran east on Wabansia while defendant ran in the opposite direction. After witnessing the shooting, Pearl went to the police station and identified defendant from a photo array as the shooter.

¶ 5 Vincent Harris, McDaniel's cousin and defendant's neighbor, confirmed Pearl's testimony that Warren drove up, went into the gangway, then walked back out front with defendant. Warren stopped, but defendant continued walking to McDaniel, said something to him, then shot

[1] Because the record on appeal does not include the transcripts or any documents from defendant's trial, we have gleaned the facts of defendant's case from our order in *People v. Barfield*, No. 1-03-1314 (2005) (unpublished order under Supreme Court Rule 23).

him from five to six feet away. After the shooting, defendant ran west on Wabansia. Later that day, Vincent identified defendant as the shooter in a photo array. According to Vincent, Pearl was standing outside the car when the shots began.

¶ 6 Donald Harris, McDaniel's cousin, essentially reiterated the testimony of Pearl and Vincent and also stated the brown Chevy circled around the block one or two times before parking. Donald did not know the driver's identity but later learned it was Warren. After defendant shot McDaniel, Donald saw Warren go to his car. Police subsequently arrived and arrested Warren, whom Donald said was not the shooter. On cross-examination, Donald denied telling police Warren was the shooter.

¶ 7 John Hause, a special agent for the Federal Bureau of Investigation (FBI), testified that he learned in March 1997 that defendant was wanted for murder and might be in San Diego. Hause went to defendant's apartment, found him there, and arrested him. That day, he and another agent interviewed defendant after advising him of his rights. Defendant said he did not wish to make a statement. However, when the other agent left the room, defendant turned to Hause and stated, "Why did they put me on the most wanted?" to which Hause replied he did not know. Defendant then said, "All those murders up there in Chicago, and they put me on the most wanted? I never killed nobody except that one." Hause did not ask any follow-up questions.

¶ 8 The parties stipulated that "Officer Conwell would testify that Pearl Harris said the same as Donald Harris but saw driver hand something to shooter." They also stipulated that Officer Conwell's report indicated officers arrived on the scene and placed "the driver, now known as Barfield, Warren" into the squad car. In addition, Officer Harris's report stated an "unknown female" reported "that the driver of the vehicle, that being William Barfield or Warren Barfield," was inside the vehicle "and was talking to the named offender prior to the shooting, driver of the vehicle, Warren Barfield[.]" The report named the offender as William Barfield.

¶ 9 Following the presentation of evidence, defendant argued at closing that Warren was the shooter, not defendant. The trial court, however, found defendant guilty of first degree murder and subsequently sentenced him to 36 years in prison. We affirmed the trial court's judgment on direct appeal. *People v. Barfield*, No. 1-99-2010 (2001) (unpublished order under Supreme Court Rule 23).

¶ 10 In 2002, defendant filed a *pro se* postconviction petition, alleging ineffective assistance of both trial and appellate counsel. The trial court summarily dismissed the petition. In 2003, defendant, through counsel, filed an amended postconviction petition, which the trial court also dismissed because it was untimely and raised claims that were barred by *res judicata* and lacked merit. On appeal, we affirmed the court's judgment. *People v. Barfield*, No. 1-03-1314 (2005) (unpublished order under Supreme Court Rule 23).

¶ 11 In 2006, defendant filed a *pro se* successive postconviction petition, realleging claims of ineffective assistance of trial and appellate counsel. The trial court summarily dismissed the petition. Defendant filed a notice of appeal, and the Office of the State Appellate Defender (OSAD) subsequently filed a motion to withdraw pursuant to *Pennsylvania v. Finley*, 481 U.S. 551 (1987), asserting it could raise no meritorious claims on appeal because defendant's arguments were barred by *res judicata* and waiver. This court allowed OSAD's motion and affirmed. *People v. Barfield*, No. 1-06-2466 (2008) (unpublished order under Supreme Court Rule 23).

¶ 12 According to the trial court's order in this case, defendant filed another successive postconviction petition in January 2006, which the court dismissed in February 2006. This petition is not in the record on appeal.

¶ 13 In April 2012, defendant filed the instant *pro se* motion for leave to file a successive postconviction petition, attaching thereto an affidavit from Andrew Coe, which defendant

claimed constituted newly discovered evidence establishing his actual innocence. In his affidavit, Coe averred he was standing outside 1705 North Linder at around 10 a.m. on November 6, 1993,[2] when he observed a brown car drive up and park in front of his friend's aunt's apartment. A man Coe recognized and knew as Warren Barfield got out of the car, approached the building directly across the street from Coe, and rang the doorbell. When nobody answered, Warren started walking toward the corner of Linder and Wabansia where a group of people were standing.

¶ 14 According to Coe, when Warren reached the corner, he became involved in "some sort of argument with one of the men" in the group. During the argument, Warren reached to his waistband, pulled out a gun, and "started shooting" at a man. The man "took off running" before subsequently collapsing on the street. Warren then ran in between the building where he had previously rang the doorbell. A minute or so later, the individuals who had been standing on the corner "came running" toward the victim, screaming. As the group tended to the victim, Coe saw Warren "come running back out" from between the building and get into the brown car. A group of people jumped in front of the car to prevent Warren from driving away. An officer then arrived and drew his gun, "telling the gentlemen in the car to put his hands up." Other patrol cars arrived shortly thereafter, and Coe became scared and went home. He "never broke [his] silence to anyone" about what he witnessed out of fear and for his own safety. However, he finally came forward with his statement because he had later been a victim of gun violence and had also discovered the wrong man was charged, convicted, and sentenced for the crime Warren committed.

¶ 15 The trial court denied defendant's motion for leave to file a successive postconviction petition. The court found that defendant had not presented newly discovered evidence, as he

[2] Presumably Coe meant to write November 5, 1993, as that was the day the murder took place.

knew of the substance of the evidence in Coe's affidavit at trial. In addition, the court reasoned that even if defendant had established the evidence could not have been discovered sooner, he failed to establish Coe's testimony would probably change the result on retrial. The court noted that three eyewitnesses who knew defendant testified he was the shooter. In addition, witnesses described two offenders running in separate directions, and the police subsequently apprehended the driver, Warren Barfield, but did not apprehend the shooter at the time of the offense. Finally, the court pointed out that defendant made a statement implicating himself to FBI agent Hause. Based on the foregoing, the court denied defendant leave to file his successive postconviction petition. This appeal followed.

¶ 16 On appeal, defendant asserts the trial court erred by denying him leave to file a successive postconviction petition because he made a showing of cause and prejudice and actual innocence. Specifically, defendant contends Coe's affidavit is newly discovered, material, non-cumulative evidence that holds the potential to change the result on retrial.

¶ 17 The Post-Conviction Hearing Act (Act) provides a procedure through which defendants can challenge their convictions on grounds of constitutional violations. *People v. Domagala*, 2013 IL 113688, ¶ 32. The Act generally contemplates the filing of only one postconviction petition. *People v. Edwards*, 2012 IL 111711, ¶ 22. Indeed, the Act explicitly states that "[a]ny claim of substantial denial of constitutional rights not raised in the original or an amended petition is waived." 725 ILCS 5/122-3 (West 2012). The bar against successive postconviction proceedings will be relaxed, however, in two instances. *Edwards*, 2012 IL 111711, ¶ 22. The first instance is when a defendant can show "cause and prejudice" for his failure to raise the claim earlier. *Id.* Second, even without showing cause and prejudice, a defendant may assert a claim of actual innocence to prevent a fundamental miscarriage of justice. *People v. Coleman*, 2013 IL 113307, ¶ 83.

¶ 18 Although defendant contends he has satisfied the cause-and-prejudice test, we need not determine whether defendant established "cause" and "prejudice" because his successive postconviction petition is based on a claim of actual innocence. See *Coleman,* 2013 IL 113307, ¶ 83. Accordingly, we proceed directly to considering whether defendant has set forth a successful actual innocence claim.

¶ 19 A trial court should deny a defendant leave to file a successive postconviction petition based on actual innocence only when "it is clear, from a review of the successive petition and the documentation provided by the petitioner that, as a matter of law, the petitioner cannot set forth a colorable claim of actual innocence." *Edwards,* 2012 IL 111711, ¶ 24. To succeed on a claim of actual innocence, a defendant must present new, material, noncumulative evidence of such a conclusive nature that it would probably change the result on retrial. *Coleman*, 2013 IL 113307, ¶ 96.

¶ 20 In *Edwards*, our supreme court declined to decide the appropriate standard of review for a trial court's denial of leave to file a successive petition based on actual innocence. See *Edwards*, 2012 IL 111711, ¶ 30. The supreme court suggested that either an abuse-of-discretion or *de novo* standard could apply but ultimately concluded it did not need to resolve the standard because defendant's actual innocence claim failed under either standard of review. *Id.* Similarly, here, we need not decide whether the standard of review is *de novo* or abuse of discretion because under either standard, defendant's actual innocence claim fails.

¶ 21 First, Coe's affidavit is not "newly discovered" evidence. Newly discovered evidence is "evidence that has been discovered since the trial and that the defendant could not have discovered sooner through due diligence." *People v. Ortiz*, 235 Ill. 2d 319, 334 (2009). Evidence is not "newly discovered" when it consists of facts known to the defendant at the time of trial, even if the source of those facts was unknown, unavailable, or uncooperative. *People v. Jones*,

399 Ill. App. 3d 341, 364 (2010). Here, Coe's affidavit, which describes his observations of the shooting, does not contain any facts unknown to defendant at the time of trial. Indeed, at trial, defendant argued at closing that Warren was the shooter. Notably, defendant does not contend he was not present at the scene of the shooting such that he had no way of knowing Coe witnessed the shooting. See *People v. Adams*, 2013 IL App (1st) 111081, ¶ 33 (witnesses' affidavits were newly discovered where the defendant testified he was not present at the scene when the crime occurred and thus would have had no way of knowing the witnesses observed the offense).

¶ 22 Moreover, even assuming Coe's affidavit is newly discovered evidence, it is not so conclusive that it would probably change the result on retrial. *Edwards*, 2012 IL 111711, ¶ 32. "Evidence of actual innocence must support total vindication or exoneration, not merely present a reasonable doubt." *Adams*, 2013 IL App (1st) 111081, ¶ 36. In this case, Coe's affidavit does not affirmatively state defendant was not present at the scene or not involved in any capacity in the shooting. Rather, Coe's affidavit states he observed a car park near 1705 North Linder, from which Warren exited and subsequently shot the victim. Thus, Coe's affidavit fails to completely exonerate defendant, as Coe's version of events does not preclude defendant's involvement in the shooting, particularly where three eyewitnesses at trial described two men as being involved in the victim's shooting, both a shooter and a driver. See *Lofton*, 2011 IL App (1st) 100118, ¶ 40 (an affiant's statement that he was the shooter "would not have been enough" to support the defendant's actual innocence claim if the defendant was still actively involved under the affiant's version of events).

¶ 23 In addition, Coe's testimony that Warren was the shooter would only provide the basis to assert a reasonable doubt argument, as other evidence at trial strongly supported defendant's conviction. In particular, three eyewitnesses who were neighbors of defendant identified him as the shooter and Warren as the driver. The responding officers' reports indicated they arrested the

driver, who they later identified as Warren. Defendant also told the FBI agent that he "never killed nobody except that one." In light of the foregoing evidence, we cannot conclude Coe's testimony would probably change the result on retrial. Compare *People v. Sanders*, 2014 IL App (1st) 111783, ¶ 23 (a witness's affidavit that a codefendant acted alone was not of such conclusive nature that it would probably change the result on retrial where two witnesses at trial testified the defendant participated in the crime), with *People v. Parker*, 2012 IL App (1st) 101809, ¶ 85 (a codefendant's affidavit that the defendant played no part in the murder was completely exculpatory where no physical evidence or eyewitness testimony was presented at trial and the primary evidence consisted of defendant's confession, given after multiple interrogations and 15 hours in custody).

¶ 24 Because Coe's affidavit was not newly discovered evidence or of such conclusive character that it was likely to change the outcome upon retrial, the trial court properly denied defendant's *pro se* motion for leave to file a successive postconviction petition. Accordingly, we affirm the trial court's judgment.

¶ 25 Affirmed.