

IN THE CIRCUIT COURT OF THE THIRTEENTH JUDICIAL CIRCUIT
LASALLE COUNTY, ILLINOIS

PEOPLE OF THE STATE OF ILLINOIS,)
Plaintiff-Respondent,)
)
VS.)
)
CHESTER O. WEGER,)
Defendant-Petitioner.)

No. 1960-CF-753

ORDER

On March 3, 1961 the petitioner was convicted of the murder of Lillian Oetting and was sentenced to life in prison. He appealed the jury's verdict, and his conviction was affirmed by the Illinois Supreme Court in 1962. The petitioner filed a post-conviction petition in 1967, which was dismissed by the trial court. That dismissal was affirmed by the appellate court. A subsequent post-conviction petition filed in 1997 was also denied.

On February 17, 2023, the Petitioner filed a Motion for Leave to File a Successive Post Conviction Petition based upon a claim of actual innocence pursuant to 725 ILCS 5/122-1. The court has reviewed the motion, the proposed successive petition and the multiple attachments, and issues this order.

The Post-Conviction Hearing Act (725 ILCS 5/122-1 *et seq.* (West 2022) "provides a statutory remedy to criminal defendants who claim that substantial violations of their constitutional rights occurred at trial." *People v. Edwards*, 2012 IL 111711, ¶ 21. "The Act is not a substitute for an appeal, but rather, is a collateral attack on a final judgment." *Edwards* ¶ 21. "[W]here a petitioner has previously taken an appeal from 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.” *Edwards* ¶ 21. “As a consequence, only one postconviction proceeding is contemplated under the Act.” *People v. Robinson*, 2020 IL 123849 (2020) ¶ 42.

Although the petitioner has filed post-conviction petitions previously, it is well settled that “the bar against successive proceedings will be relaxed on two grounds. The first is where the petitioner can establish cause and prejudice for the failure to assert a postconviction claim in an earlier proceeding [cite omitted], [and] [t]he second is where the petitioner asserts a fundamental miscarriage of justice based on actual innocence.” *Robinson* ¶ 42. “Prior to commencing a successive postconviction petition, a petitioner must obtain leave of court.” *Robinson* ¶ 43. “A request for leave to file a successive petition should only be denied where it is clear from a review of the petition and supporting documentation that, as a matter of law, the petition cannot set forth a colorable claim of actual innocence.” *Robinson* ¶ 44.

The petitioner asserts that he did not murder Lillian Oetting, and therefore he is seeking leave to file a successive post-conviction petition based on a claim of actual innocence. “To establish a claim of actual innocence, the supporting evidence must be (1) newly discovered, (2) material and not cumulative, and (3) of such conclusive character that it would probably change the result on retrial.” *Robinson* ¶ 47. “Newly discovered evidence is evidence that was discovered after trial and that the petitioner could not have discovered earlier through the exercise of due diligence.” *Robinson* ¶ 47. “Evidence is material if it is relevant and probative of the petitioner’s innocence.” *Robinson* ¶ 47.

“Noncumulative evidence adds to the information that the fact finder heard at trial.”

Robinson ¶ 47. “Lastly, the conclusive character element refers to evidence that, when considered along with the trial evidence, would probably lead to a different result.”

Robinson ¶ 47.

To support his actual innocence claim, the petitioner attaches 65 exhibits to his proposed successive post-conviction petition. Many of these documents have more relevance to supporting his theory of the case than meeting the criteria needed to be evidence of actual innocence. However, some of the exhibits are offered as evidence of the petitioner’s innocence.

One of the principal documents relied on by the petitioner is the transcribed sworn statement of Roy Tyson (Exhibit 20) taken July 20, 2022. In that document Tyson states that he was friends with a man named Harold “Smokey” Wrona, who, in 1996 or, 1997, admitted to him that he was responsible for planning the murders of three women at Starved Rock in 1960. Wrona provided him with specific details concerning his involvement, which included the amount he was paid, how the murders would occur and where they would take place, and how the evidence was destroyed. He purportedly told Tyson that the petitioner was not involved in the murders.

“At the pleading stage of postconviction proceedings, all well-pleaded allegations in the petition and supporting affidavits that are not positively rebutted by the trial record are to be taken as true.” *Robinson* ¶ 45. Although the statement by Tyson contains hearsay information, that is not a something this court can consider because “Illinois Rule of Evidence 1101(b)(3) (eff. Sept. 17, 2019) specifically provides that the rules of evidence do not apply to postconviction hearings.” *Robinson* ¶ 78. Additionally,

“questions regarding the admissibility and reliability of such evidence are not relevant considerations at the motion for leave to file stage of a successive postconviction proceeding.” *Robinson* ¶ 81. Therefore, in determining whether the sworn statement of Tyson is sufficient to meet the standards applicable for first stage review, the court is required to determine whether his statement is “(1) newly discovered, (2) material and not cumulative, and (3) of such conclusive character that it would probably change the result on retrial.” *Robinson* ¶ 47.

The first issue the court must decide is whether the statement is newly discovered. “Newly discovered evidence is evidence that was discovered after trial and that the petitioner could not have discovered earlier through the exercise of due diligence.” *Robinson* ¶ 47. According to the sworn statement, Tyson reached out to petitioner’s attorney on Facebook Messenger in January, 2022, and he gave his videotaped sworn statement on July 20, 2022. Tyson stated under oath that, in 1996 or 1997, Wrona told him about his involvement in the murders, which was more than 36 years after the crime took place. Tyson testified that he did not tell anyone about Wrona’s admissions until he contacted petitioner’s counsel in 2022. Based on these representations, it is apparent that the information contained in Tyson’s statement was discovered by the petitioner after his trial and he could not have learned it earlier through the exercise of due diligence because the petitioner was not aware of Wrona’s alleged involvement or that he subsequently made these statements to Tyson. Since the court is required at a first stage review of a successive post-conviction petition to accept all well-pleaded allegations in the petition and the supporting affidavit as true, and since these statements are not positively rebutted

by the trial record, the court finds that the sworn statement contained in Exhibit 20 is newly discovered evidence.

The second element the court must consider is whether the statement is material and not cumulative. “Evidence is material if it is relevant and probative of the petitioner’s innocence.” *Robinson* ¶ 47. The petitioner confessed to the murder of Lillian Oetting, but subsequently recanted his statements and maintained his innocence throughout his trial. His confession was a significant focus of the State’s evidence against him. The purported admissions by Wrona, made to Tyson, contradict the petitioner’s confession and are therefore arguably relevant and probative of the petitioner’s innocence. This evidence is noncumulative because “[n]oncumulative evidence adds to the information that the fact finder heard at trial” *Robinson* ¶ 47, and there was no testimony at the trial that Wrona was involved in orchestrating the murder. Therefore, the court finds that Tyson’s statement contained in Exhibit 20 is material and non-cumulative.

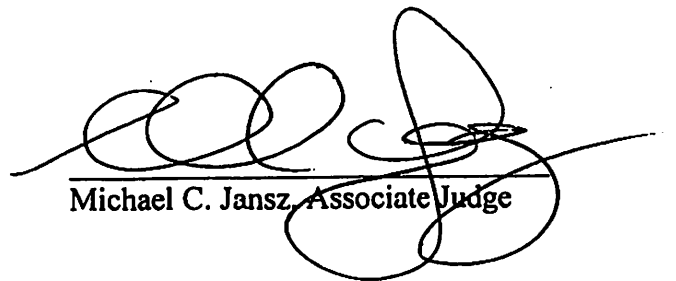
The third factor the court must consider is whether Tyson’s statement is “of such conclusive character that it would probably change the result on retrial.” *Robinson* ¶ 47. “[T]he new evidence supporting an actual innocence claim need not be entirely dispositive to be likely to alter the result on retrial.” *Robinson* ¶ 56. In making this determination the court is aware that it is not permitted to engage in any fact finding or credibility determinations at this first stage of the proceedings (“[c]redibility findings and determinations as to the reliability of the supporting evidence are to be made only at a third-stage evidentiary hearing in a successive postconviction proceeding.” *Robinson* ¶ 61). Additionally, “[i]n assessing whether a petitioner has satisfied the low threshold applicable to a colorable claim of actual innocence, the court considers only whether the

new evidence, if believed and not positively rebutted by the record, could lead to acquittal on retrial.” *Robinson* ¶ 60. The sworn statement by Tyson offers an alternative explanation to the evidence presented at trial as to how the murders occurred and who was involved. The information provided by Tyson is not positively rebutted by the record and, if believed, could arguably lead to the petitioner’s acquittal. Therefore, the court finds that the statement of Tyson is arguably of a conclusive character because it contradicts the confession of the petitioner and meets the low bar established for this stage of post-conviction proceedings.

“A request for leave to file a successive petition should only be denied where it is clear from a review of the petition and supporting documentation that, as a matter of law, the petition cannot set forth a colorable claim of actual innocence.” *Robinson* ¶ 44. In light of applicable legal standards, the court finds that the petitioner has satisfied the pleading requirements for granting leave to file a successive post-conviction petition, and therefore his claim must be advanced to second-stage proceedings. In light of this determination it is not necessary for the court to analyze the other exhibits attached in support of the petition.

Based on the court’s findings, IT IS HEREBY ORDERED that the petitioner’s Motion for Leave to File a Successive Post-conviction Petition based on a claim of actual innocence is GRANTED.

September 1, 2023



Michael C. Jansz, Associate Judge