

1-10-1272

NOTICE: This order was filed under Supreme Court Rule 23 and may not be cited as precedent by any party except in the limited circumstances allowed under Rule 23(e)(1).

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. 87 CR 10095
)	
RONALD TELLEZ,)	Honorable
)	Rickey Jones,
Defendant-Appellant.)	Judge Presiding.

JUSTICE CUNNINGHAM delivered the judgment of the court.
Justices Connors and Harris concurred in the judgment.

ORDER

¶ 1 *Held:* Order denying leave to file successive post-conviction petition affirmed where defendant failed to establish that newly discovered evidence demonstrated his actual innocence.

¶ 2 Defendant Ronald Tellez appeals from an order of the circuit court of Cook County denying him leave to file a successive *pro se* petition for relief under the Post-Conviction Hearing Act (Act) (725 ILCS 5/122-1 *et seq.* (West 2008)). Defendant contends that the court erred in denying him leave to file his successive petition based on lack of cause and prejudice where he raised a viable claim of actual innocence.

¶ 3 Defendant, a former Blue Island police officer, was found guilty by a jury of first degree murder in connection with the March 29, 1986, shooting death of Archer Mueller. Although a jury found him eligible for the death penalty, he was sentenced to life in prison. We affirmed that

judgment on direct appeal (*People v. Tellez*, 235 Ill. App. 3d 542, 557 (1992)), and provided a detailed recitation of the facts at trial. Here, we will summarize only those facts necessary to decide the instant appeal.

¶ 4 At trial, three witnesses testified that defendant had admitted to killing Mueller. John Branco, who had been "friends with" members of organized crime, testified that, in cooperation with the FBI, he recorded a conversation in which defendant told him he "took out" Mueller and that he wanted to become a hit man for the Mafia. Throughout the conversation, defendant provided several details of the killing. This recorded conversation was then played for the jury. FBI agent John Bonino testified that, while working undercover as a member of the Mafia, he recorded a conversation in which defendant told him that he shot Mueller three times in the head and staged the scene to look like a robbery. Defendant also told Agent Bonino that Connie Branco (Mueller's estranged wife, John Branco's daughter, and defendant's former girlfriend) provided him with keys to Mueller's office and "set the whole thing up." The conversation recorded by Agent Bonino was also played for the jury. Connie Branco, who had pleaded guilty to solicitation of murder for her involvement in the killing, testified that defendant told her he could "get rid of" Mueller in exchange for a chance to meet her Mafia-connected father and prove to him that he could "kill like the Mafia does." Connie provided keys to Mueller's office and information about Mueller.

¶ 5 Fellow Blue Island police officers testified that they had seen defendant using a Ruger .357 as his service weapon for about five or six years, but sometime after March 1986, he started using a different firearm. A firearms expert testified that bullets recovered from the victim were nylon-coated and either a .38 or .357 magnum caliber. Two acquaintances testified that defendant had offered to pay them to lie to the police to testify falsely on his behalf.

¶ 6 Earnest Peele, an FBI agent and evidence technician, testified that he used "bullet lead analysis" to compare the bullets recovered from the victim with two boxes of bullets that had once been in defendant's possession. His analysis involved scraping a portion of the bullet and running

it through gamma ray spectroscopy equipment and neutron activation reactors in order to determine the composition of elements in each bullet. Agent Peele testified that both are "standard comparison" techniques. Defendant did not object to the scientific testimony. Agent Peele also stepped down from the witness stand and used a white board to explain the results of his analysis, from which he concluded that the fired bullets were "consistent as having come from" the same box as the unfired bullets. On cross-examination, Agent Peele testified that "consistent" did not mean "absolute" and that there may have been "other logical places" to find the bullets.

¶ 7 In 2001, defendant filed his initial *pro se* post-conviction petition, alleging, *inter alia*, ineffective assistance of trial and appellate counsel and that newly discovered evidence demonstrated his actual innocence. The trial court summarily dismissed this petition and we affirmed that dismissal. *People v. Tellez*, No. 02-1230 (2004) (unpublished order under Supreme Court Rule 23). In this order, we noted that the multiple admissions that defendant had made implicating himself in the shooting "make it impossible for him to demonstrate prejudice" in his ineffective assistance claim. *Tellez*, No. 02-1230, slip op. at 26.

¶ 8 In 2006, defendant filed his first successive *pro se* post-conviction petition alleging ineffective assistance of post-conviction counsel, which the trial court summarily dismissed. We affirmed that dismissal in an order granting appellate counsel's motion to withdraw pursuant to *Pennsylvania v. Finley*, 481 U.S. 551 (1987). *People v. Tellez*, No. 06-3709 (2008) (unpublished order under Supreme Court Rule 23).

¶ 9 In September 2009, defendant filed the instant *pro se* motion for leave to file a second successive post-conviction petition alleging, *inter alia*, that newly discovered evidence demonstrated his actual innocence. The newly discovered evidence consisted of an appended transcript from an investigative report that aired on the television program *60 Minutes* entitled "Evidence of Injustice." The program included an interview with Dwight Adams, a former FBI lab director who denounced bullet lead analysis. Defendant alleged that this transcript demonstrated that the State knowingly

used perjured evidence when it presented testimony from Agent Peele that bullet lead analysis led him to conclude that bullets recovered from the victim were taken from a box of bullets linked to defendant. Based on this transcript and his pleadings, defendant alleged that there is "no evidence" linking him to the crime.

¶ 10 The circuit court denied defendant leave to file a successive petition because he failed to satisfy the cause and prejudice test. Defendant now challenges this ruling on appeal, claiming that he presented a free-standing claim of actual innocence and that his cause should be remanded for further proceedings under the Act.

¶ 11 Our review of the order denying defendant's motion for leave to file a successive postconviction petition is *de novo*. *People v. Simmons*, 388 Ill. App. 3d 599, 606 (2009). As such, we review the judgment of the court, not the reasons cited, and may affirm on any basis that is supported by the record if the judgment is correct. *People v. Anderson*, 401 Ill. App. 3d 134, 138 (2010).

¶ 12 The Act contemplates the filing of only one post-conviction petition (*People v. Ortiz*, 235 Ill. 2d 319, 328 (2009)); however, the statutory bar to a successive petition may be relaxed where fundamental fairness so requires (*Id.* at 329 (and cases cited therein)). Section 122-1(f) of the Act prohibits the filing of a successive petition without first obtaining leave of court, which is expressly conditioned on defendant's satisfaction of the cause and prejudice test. *People v. LaPointe*, 227 Ill. 2d 39, 44 (2007). However, in a non-death penalty case, as here, where defendant sets forth a claim of actual innocence in a successive post-conviction petition, he is not required to show cause and prejudice. *Ortiz*, 235 Ill. 2d at 330.

¶ 13 Relief under this theory requires that the "supporting evidence be new, material, noncumulative and, most importantly, of such conclusive character as would probably change the result on retrial [citations]" (Internal quotations omitted). *People v. Washington*, 171 Ill. 2d 475, 489 (1996). The evidence proffered by defendant here is not of such character. Defendant asserts that

he established an actual innocence claim through the transcript of a *60 Minutes* investigative report because it demonstrates that Agent Peele's bullet lead analysis testimony was "perjured." Taking this allegation as true on its face, it would have no discernible impact on the result of defendant's trial if there were further proceedings under the Act. At trial, three witnesses testified that defendant admitted killing Mueller, and that he had done so in order to gain work as a Mafia hit man. Two of these conversations were recorded in authorized wiretaps and played for the jury. In addition, two of his fellow police officers testified that defendant had been using a .357, the same type of weapon used in the shooting, as his service weapon until the approximate time of the shooting. After that point, defendant started using a different service weapon. Two acquaintances testified that defendant had approached them and asked them to falsely testify for him. In the face of this overwhelming evidence, even if the conclusions drawn from the bullet lead analysis were false, defendant is unable to demonstrate that it would change the result.

¶ 14 Moreover, Agent Peele's testimony that bullets at the crime scene "could have" matched bullets once in defendant's possession was far from being the lynchpin of the trial that defendant alleged in his pleadings. In the *60 Minutes* report, Dwight Adams states that conclusions that bullet lead analysis determined whether a bullet came from a particular batch or box of bullets is "misleading and inappropriate in criminal trials." Agent Peele testified at trial that the bullet lead analysis conducted determined that the bullets in question were of "the same composition" and it was "consistent with them coming from the same box," but it was "not an absolute" and the agent acknowledged that there were "other logical places to find it." The material presented by defendant in the transcript attached to his petition, at best, calls into question the validity of a forensic test that was widely accepted at the time of trial. Therefore, in light of defendant's repeated admissions of guilt and the strength of the remaining evidence against him, if Agent Peele's testimony was, in fact, perjured, it would not change the result on retrial.

¶ 15 Based on the foregoing, we find that defendant did not present a claim that newly discovered

1-10-1272

evidence demonstrated his actual innocence and that the record does not support granting defendant further proceedings under the Act. Accordingly, we affirm the order of the circuit court of Cook County denying defendant leave to file a successive petition.

¶ 16 Affirmed.