

No. 1-12-0300

**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).

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IN THE  
APPELLATE COURT OF ILLINOIS  
FIRST JUDICIAL DISTRICT

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THE PEOPLE OF THE STATE OF ILLINOIS,	)	
	)	Appeal from the
Plaintiff-Appellee,	)	Circuit Court of
	)	Cook County.
v.	)	
	)	No. 83 C 118372
THOMAS ALLMAN,	)	
	)	The Honorable
Defendant-Appellant.	)	Michael B. McHale,
	)	Judge Presiding.

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JUSTICE DELORT delivered the judgment of the court.  
Presiding Justice Hoffman and Justice Rochford concurred in the judgment.

**ORDER**

¶ 1 *Held:* The circuit court did not abuse its discretion in denying defendant's petition for a certificate of innocence (735 ILCS 5/2-702 (West 2010)) where defendant failed to prove the statutory prerequisites to the granting of the certificate by a preponderance of the evidence.

¶ 2 In 1983, defendant Thomas Allman pled guilty to possession of a stolen motor vehicle (PSMV), was sentenced to probation for 18 months, and was ordered to pay restitution in the amount of \$250. In 2010, ostensibly to obtain a driver's license, defendant filed a petition for a

12-0300

certificate of innocence pursuant to section 2-702 of the Code of Civil Procedure (735 ILCS 5/2-702 (West 2010)). The circuit court denied the petition for a certificate of innocence, and defendant appealed.

¶ 3

### BACKGROUND

¶ 4 Defendant was arrested on November 18, 1983, after he was stopped for driving an unsafe vehicle with a non-operating right headlight and loud muffler. The car was a 1975 Chevrolet Camaro belonging to Anna and Nelson Sanchez, reported stolen in DuPage County a month earlier. The car had a falsified vehicle identification number (VIN), for which defendant held a title issued on November 2 (the year is not legible on the report). The arrest report reflected charges of theft, PSMV, possession of a vehicle with a false VIN under the Illinois Vehicle Code, and “unsafe vehicle” under the Municipal Code of the City of Chicago. However, the information charged defendant only with PSMV.

¶ 5 On December 21, 1983, defendant pled guilty to PSMV. Judge Champion sentenced him to 18 months of probation and ordered him to pay \$250 in restitution. The half-sheet so reflects, and the record contains a certified statement of the conviction and sentence. The certified statement also discloses that on July 10, 1984, Judge Morrissey issued a warrant against defendant for violation of that probation.

¶ 6 The record also contains a form entitled “Notification of Felony Final Disposition,” dated December 21, 1983. The form reflects that on December 21, 1983, Judge Champion convicted defendant of PSMV and sentenced him to 18 months of probation. On the form, the words “PLEA” and “GUILTY” are circled. There is neither an official file-stamp nor a judge’s

12-0300

signature on the form.

¶ 7 On March 21, 1984, defendant paid \$50 of the \$250 in restitution. On June 14, 1984, the State prepared a petition for violation of probation (VOP), alleging that defendant had violated the probation by failing to make the remaining restitution payments and by being arrested on April 7, 1984 for theft and two counts of simple battery. On July 10, 1984, the circuit court issued a warrant for violation of probation for defendant. On various dates in 1985, the court entered orders committing defendant to the Cook County Department of Corrections for failure to post bail for the VOP. The last order, dated July 3, 1985, required defendant to return to court on August 1, 1985. According to both the certified statement of conviction and sentence, and the half-sheet certified by the circuit court clerk, Judge Nudelman terminated defendant's probation satisfactorily on August 1, 1985. Neither the certified statement nor the half-sheet memorializes the defendant's assertion that he was actually found *not* guilty on August 1, 1985.

¶ 8 On September 8, 2010, defendant filed a *pro se* petition for a certificate of innocence. Defendant alleged that defense counsel, who represented him at the plea hearing, was simultaneously employed as a "full-time prosecutor" for the Village of Oak Lawn, which defendant did not know at that time, creating a conflict of interest. Defendant alleged that he was incarcerated on the subsequent charges stated in the petition for violation of probation and also on the date set for the VOP, that he wrote a letter to the State's Attorney asking that his conviction for PSMV be vacated because of defense counsel's conflict of interest, and that he received a letter from his public defender stating that his conviction had in fact been vacated. None of these letters appear in the record. Defendant alleged he had not been able to obtain a

12-0300

driver's license because he could not document or prove that he had been found not guilty of PSMV. Defendant claimed he would be able to prove the statutory factors for a certificate of innocence by the necessary preponderance of the evidence. Finally, defendant's petition admits defendant was not sent to the penitentiary on the PSMV charge, but argues that section 2-702 applies because, in the context of the Post-Conviction Hearing Act, the words "imprisoned in the penitentiary" have been liberally construed to include persons sentenced to probation.

¶ 9 On September 12, 2011, the State filed a response opposing defendant's petition, which contained the certified statement of conviction contradicting defendant's claim that he had eventually been found not guilty.

¶ 10 Defendant filed a reply to which he attached another "Notification of Felony Disposition" form, dated August 1, 1985. That form does not list any convictions. Instead, for case number "83-18372," the words "FINDING" and "NOT GUILTY" are circled. The form does not bear an official file-stamp or a judge's signature. Defendant also attached a copy of defense counsel's appearance for the PSMV charge to his reply, displaying defense counsel's address as 2600 South California Avenue in Chicago. Defendant's reply alleged that he had served all or part of his sentence for violation of probation in prison; that on September 23, 2010, an assistant State's Attorney said that some files had been destroyed; that he had made several requests for the final disposition in the PSMV case to clear his driving record; that on October 12, 2010 he filed a complaint with the United States Attorney's Office because only part of the original file could be found; and that the PSMV conviction did not appear on state and federal criminal background searches performed in 2010.

12-0300

¶ 11 On December 13, 2011, the circuit court denied defendant's petition. During the hearing, defendant presented no sworn evidence whatsoever but only argument. He stated that his PSMV conviction was overturned because an assistant State's Attorney had defended him. The court observed that the conviction was not overturned and that it appeared on the court clerk's certified statement of conviction. Defendant initially stated that he had been imprisoned in Joliet for the probation violation, but he later stated that he had never gone to Joliet for the probation violation and was in the Cook County jail instead. When the court asked defendant for proof of his actual innocence, defendant responded that he was found not guilty. The court observed such a finding did not constitute "actual innocence" and that defendant needed to show that he was not in possession of a stolen motor vehicle. Defendant responded, "And I was not." The court asked defendant if he had proof other than his denial in open court, such as an alibi or a witness. Defendant once again replied that he was found not guilty. The court again informed defendant that was not "actual innocence" and that the burden was on defendant to show his actual innocence by a preponderance of the evidence. The court observed that defendant pled guilty. The court found that defendant failed to show that he ever spent time in prison, that his conviction was reversed or vacated, that the State dropped the charges, or that there was a retrial. The court thus found that defendant failed to provide any proof of actual innocence and denied the petition.

¶ 12

#### ANALYSIS

¶ 13 A person who was wrongly convicted and imprisoned may file a petition for a certificate of innocence in the circuit court of the county in which he was convicted to seek compensation in

12-0300

the Court of Claims. See 735 ILCS 5/2-702(a), (b) (West 2010); 705 ILCS 505/8(c) (West 2010). “Section 2-702 makes available an avenue to obtain a finding of innocence so that the defendant may obtain relief against the State for wrongful incarceration through the court of claims.” (Internal citations omitted.) *People v. Dumas*, 2013 IL App (2d) 120561, ¶ 16 (2013) (citing *Betts v. United States*, 10 F.3d 1278, 1283 (7th Cir. 1993) (noting that, under a similar federal statute, a certificate of innocence serves no purpose other than to permit its bearer to sue the government for damages)). Therefore, a certificate of innocence is not a substitute for any of the more traditional means of overturning criminal convictions, such as motions to withdraw guilty pleas and postconviction petitions.

¶ 14 The petitioner must attach documentation to the petition that demonstrates: (1) that he has been convicted of a felony by the State of Illinois, was sentenced to prison, and served all or any part of the sentence; (2)(a) that the conviction was reversed or vacated and the charging instrument was dismissed, or, if a new trial was ordered, that he either was found not guilty on retrial or was not retried and the charging instrument was dismissed, or (2)(b) that the statute underlying the charging instrument or its application was unconstitutional; and (3) that the claim is not time-barred under section 2-702(i) (735 ILCS 5/2-702(i) (West 2010)). 735 ILCS 5/2-702(c) (West 2010). The petition must also allege facts in sufficient detail to allow the court to find that the petitioner is likely to succeed at trial in proving that he is innocent or that his acts and omissions did not constitute a felony or a misdemeanor against the State of Illinois, and that he did not voluntarily cause or bring about his conviction by his own conduct. The defendant must also verify the petition. 735 ILCS 5/2-702(d) (West 2010).

12-0300

¶ 15 A defendant seeking a certificate of innocence has the burden to prove, by a preponderance of the evidence, that (1) the State of Illinois convicted him of a felony, he was sentenced to a term of imprisonment, and he served all or any part of the sentence; (2)(a) the conviction was reversed or vacated and the charging instrument was dismissed, or, if a new trial was ordered, he either was found not guilty on retrial or was not retried and the charging instrument was dismissed, or (2)(b) the statute underlying the charging instrument or its application was unconstitutional; (3) he is innocent of the charges or his acts or omissions did not constitute a felony or a misdemeanor; and (4) he did not voluntarily cause or bring about his conviction by his own conduct. 735 ILCS 5/2-702(g) (West 2010). Whether a petitioner is entitled to a certificate of innocence is committed to the sound discretion of the circuit court which we cannot overturn unless the court abused its discretion or the findings underlying its decision were clearly erroneous. *Rudy v. People*, 2013 IL App (1st) 113449, ¶ 11 (2013) (citing *Betts*, 10 F.3d at 1283); *Kic v. Bianucci*, 2011 IL App (1st) 100622, ¶ 16 (2011).

¶ 16 Here, the evidence showed that defendant pled guilty to PSMV, was convicted of PSMV, and satisfactorily completed his sentence of probation. Thus, he only proved that he had been convicted. He failed to prove the other statutory requirements for a certificate of innocence, and he contradicted some of those other requirements. He received probation. Defendant was held in the Cook County jail for failure to make bail on a probation violation, not for the PSMV itself. Defendant admitted in open court that he was not imprisoned in Joliet for the probation violation.

¶ 17 Even assuming that his incarceration in the Cook County jail for the probation violation amounted to imprisonment within the meaning of section 2-702, he failed to meet his statutory

12-0300

burden of proof. Defendant failed to prove that the PSMV conviction was reversed or vacated, that he was not retried and the charging instrument was dismissed, or that he was acquitted after a retrial. Defendant did not provide a copy of the letter he allegedly received from a lawyer indicating that the PSMV conviction was vacated. Nor did he provide even a scintilla of evidence showing the alleged conflict of interest on the part of his lawyer in 1983. Defendant insisted that his defense counsel for the PSMV charge was simultaneously an assistant State's Attorney. The only documentation that defendant provided was the appearance form listing an address which is the address of both the public defender and the State's Attorney<sup>1</sup>.

¶ 18 Defendant also submitted a form on which there was a handwritten circle around the words "Finding" and "Not Guilty." The form appears to associate "Not Guilty" with the "Plea," not the "Finding." The choices for the "Finding" were "SOL" and "Nolle Pros." Thus, the "Notification of Felony Disposition" dated August 1, 1985 is not evidence that defendant's PSMV conviction was vacated or reversed or that defendant was eventually found not guilty. In light of all of this evidence, the omission of the conviction on the federal and state criminal history sheets does not demonstrate that the conviction was reversed or vacated.

¶ 19 Defendant also cannot obtain a certificate of innocence because he pled guilty. See 735 ILCS 5/2-702(g)(4) (West 2010). Moreover, he failed to submit any proof of his actual innocence or to explain why he was innocent. He merely insisted that he was not guilty, relying

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<sup>1</sup> Defendant may be confusing a municipal prosecutor, who prosecutes municipal ordinance cases and certain minor violations of the Illinois Vehicle Code occurring within that municipality on a part-time basis, with an assistant State's Attorney. A municipal prosecutor for the Village of Oak Lawn would not necessarily have a conflict of interest representing a criminal defendant charged with PSMV in the City of Chicago.

12-0300

on an uncertified form on which there was a handwritten circle around the words “Finding” and “Not Guilty.” The trial judge noted that the uncertified form directly contradicted the certified statement of conviction stating that on the same date the court terminated defendant’s probation satisfactorily. He also noted that the form “is very unclear as to really what that means or where it came from.”

¶ 20 “[T]he plain language of section 2-702 shows the legislature’s intent to distinguish between a finding of not guilty at retrial and actual innocence of the charged offenses. This means that the defendant must prove by a preponderance of the evidence that he is ‘actually innocent,’ as opposed to circumstances in which the State presented insufficient evidence to convict.” (Internal citations and quotation marks omitted.) *People v. Dumas*, 2013 IL App (2d) 120561, ¶ 18 (2013).

¶ 21 The circuit court’s findings were not clearly erroneous. Defendant utterly failed to satisfy his burden of proof for a certificate of innocence because he failed to prove by a preponderance of the evidence that: (1) he did not cause the conviction by means of a voluntary guilty plea; (2) he was imprisoned for PSMV; (3) his conviction was reversed or vacated; and (4) he was found not guilty or the charging instrument was dismissed, or that he was actually innocent of the PSMV charged in the information. Therefore, the circuit court could not have abused its discretion by denying the petition.

¶ 22 The judgment of the circuit court is affirmed.

¶ 23 Affirmed.