SIXTH DIVISION
February 6, 2015

No. 1-13-0832

IN THE
APPELLATE COURT OF ILLINOIS
FIRST JUDICIAL DISTRICT

THE PEOPLE OF THE STATE OF ILLINOIS,	)	Appeal from the
	)	Circuit Court of
Respondent-Appellee,	)	Cook County.
	)	
v.	)	No. 95 CR 25382
	)	
RONALD EDDMONDS,	)	Honorable
	)	William G. Lacy,
Petitioner-Appellant.	)	Judge Presiding.

JUSTICE ROCHFORD delivered the judgment of the court.
Presiding Justice Hoffman and Justice Hall concurred in the judgment.

ORDER

¶ 1 *Held*: Denial of request for leave to file successive postconviction petition affirmed, where petition's claim of actual innocence was not based upon newly-discovered evidence.

¶ 2 Petitioner-appellant, Ronald Eddmonds, appeals from an order of the circuit court denying his *pro se* request for leave to file a successive postconviction petition for relief under the Post-Conviction Hearing Act (Act) (725 ILCS 5/122–1 *et seq*. (West 2012)). On appeal, petitioner argues that this decision was incorrect because his proposed successive petition raised a colorable claim of actual innocence based upon newly-discovered evidence. For the following reasons, we affirm.

¶ 3 I. BACKGROUND

¶ 4 Following a jury trial, petitioner was convicted of two counts of first-degree murder in connection with the shooting death of Dwayne Green in Chicago on July 28, 1995. The trial proceedings and the evidence presented at trial were fully set out in our prior orders, and need not be restated here. It is sufficient to note: (1) the State presented evidence that both petitioner and another man participated in the gang-related shooting of Mr. Green; and (2) petitioner did not testify on his own behalf at trial. Following his trial, petitioner was sentenced to a term of 50 years' imprisonment.

¶ 5 Petitioner filed a timely direct appeal. In an order entered on June 22, 2001, this court affirmed his convictions. *People v. Eddmonds*, No. 1-98-2927 (2001) (unpublished order pursuant to Supreme Court Rule 23). Prior thereto, in March of 2001, petitioner filed an initial postconviction petition raising a claim of ineffective assistance of counsel. That petition was dismissed in 2009 and, in an order entered on May 6, 2011, this court: (1) affirmed that dismissal; (2) vacated one of petitioner's murder convictions pursuant to the one-act, one-crime doctrine; and (3) granted petitioner additional presentence custody credit. *People v. Eddmonds*, No. 1-09-2660 (2011) (unpublished order pursuant to Supreme Court Rule 23).

¶ 6 In November of 2012, petitioner filed the instant "SUCCESSIVE POSTCONVICTION PETITION." Therein, petitioner requested leave to file a successive postconviction petition in order to present newly-discovered evidence of his actual innocence. In support of this request, petitioner presented the affidavits of himself and Tyree Head.

¶ 7 In his own affidavit, petitioner averred: (1) he had known Mr. Head prior to his arrest for the murder of Mr. Green, but had not seen or spoken to him from that time until he "ran into"

Mr. Head at the Shawnee Correctional Center in 2012; (2) over the next few days, petitioner and Mr. Head had a number of conversations and, during those conversations, Mr. Head revealed that he "was present during the event that ended Green's life;" (3) Mr. Head was not previously aware that petitioner had been convicted for the murder of Mr. Green; and (4) "[a]t some point, [petitioner] asked Mr. Head to come forward with what he knew and he agreed." In his affidavit, Mr. Head averred that he: (1) had witnessed the shooting in 1995; (2) it was a second individual, and not petitioner, who fired the gun; (3) only "saw Ron display aggression toward *** the gunman. It was clear that Ron made a strong attempt to stop the gunman from shooting at those people[;]" (4) did not previously come forward with what he knew out of fear for his safety; and (5) had not seen petitioner from the time of the shooting until they met again at the Shawnee Correctional Center.

¶ 8 On December 27, 2012, the circuit court denied petitioner's request for leave to file a successive postconviction petition, after finding "Mr. Eddmonds has not met the cause and prejudice test necessary *** to grant him leave to file a successive post-conviction petition." Petitioner timely appealed.

¶ 9 II. ANALYSIS

¶ 10 As noted above, petitioner argues that the circuit court erred when it denied him leave to file a successive postconviction petition. We disagree.

¶ 11 The Act contemplates the filing of a single postconviction petition. *People v. Holman*, 191 Ill. 2d 204, 210 (2000). Thus, section 5/122-3 of the Act provides that any claim of a substantial denial of constitutional rights not raised in an original or amended postconviction petition is waived. 725 ILCS 5/122-3 (West 2012). Nevertheless, the statutory bar against multiple petitions may be relaxed under two circumstances.

¶ 12 First, the bar is relaxed where a petitioner establishes cause and prejudice for the failure to previously raise a claim under the Act. *People v. Edwards*, 2012 IL 111711, ¶ 22. Second, it is relaxed under "what is known as the 'fundamental miscarriage of justice' exception." *Id.* ¶ 23 (quoting *People v. Pitsonbarger*, 205 Ill. 2d 444, 458 (2002)). "In order to demonstrate a miscarriage of justice to excuse the application of the procedural bar, a petitioner must show actual innocence." *Id.* ¶ 23 (citing *Pitsonbarger*, 205 Ill. 2d at 459)).

¶ 13 A petitioner must, nevertheless, first obtain leave of court to file such a successive petition. *People v. Smith*, 2013 IL App (4th) 110220, ¶ 20. When a petitioner claims actual innocence, the question facing the circuit court is whether the request for leave to file a successive petition and supporting documentation set forth a colorable claim of actual innocence; that is, whether petitioner raises the probability that, more likely than not, no reasonable juror would have convicted him in light of the new evidence. *People v. Adams*, 2013 IL App (1st) 111081, ¶ 30 (citing *Edwards*, 2012 IL 111711, ¶ 22). Petitioner must support any proposed successive petition based on actual innocence with newly discovered and reliable evidence, such as exculpatory scientific evidence, trustworthy eyewitness accounts, or critical physical evidence that was not presented at trial. *Id.* ¶ 32.

¶ 14 In addition to being newly discovered, the evidence in support of a claim of actual innocence must also be: (1) material and not merely cumulative; and (2) of such conclusive nature that it would probably change the result on retrial. *People v. Ortiz*, 235 Ill. 2d 319, 333 (2009). When a petitioner raises a claim of actual innocence in a proposed successive petition, a court will deny leave to file only when it is clear, after review of the petition and its supporting documentation, that as a matter of law the proposed petition does not make the required colorable claim of actual innocence. *Edwards*, 2012 IL 111711, ¶ 24. This court reviews the

denial of leave to file a successive postconviction petition *de novo*. *Adams*, 2013 IL App (1st) 111081, ¶ 30.

¶ 15 Petitioner first contends that the circuit court erred in applying the cause-and-prejudice test when it denied his request for leave to file a successive postconviction petition. We agree. As noted above, while the statutory bar against a successive petition may be relaxed when a petitioner establishes cause and prejudice for the failure to previously raise a claim under the Act, a claim of actual innocence is a separate basis upon which a successive petition may be filed. *Edwards*, 2012 IL 111711, ¶ 23. Because petitioner raised a claim of actual innocence, he was excused from satisfying the cause-and-prejudice test in order to obtain leave to file a successive postconviction petition. *Id*. ¶ 24.

¶ 16 Nevertheless, even if the circuit court erred in applying the cause-and-prejudice test here, that error alone does not require reversal. Because we review the circuit court's denial of leave to file a successive postconviction petition *de novo*, we review only the circuit court's ultimate judgment—not the reasons cited therefore—and we may affirm on any basis supported by the record. *People v. Anderson*, 401 Ill. App. 3d 134, 138 (2010). Thus, the improper application of the cause-and-prejudice test to a claim of actual innocence is not reversible error if the circuit court's ultimate judgment is otherwise correct. *Id*. at 141-42; *Edwards*, 2012 IL 111711, ¶ 31. Such a situation is presented in the instant case, where petitioner did not present any newly-discovered evidence in support of his claim of actual innocence.

¶ 17 "Newly discovered" evidence is evidence unavailable at trial and evidence a petitioner could not have discovered sooner through due diligence. *People v. Harris*, 206 Ill. 2d 293, 301 (2002). As this court has previously recognized, "evidence is not newly discovered when it presents facts already known to a defendant at or prior to trial, though the source of those facts

may have been unknown, unavailable or uncooperative." *People v. Jones*, 399 Ill. App. 3d 341, 364 (2010) (collecting cases). Thus, the testimonies of potential alibi witnesses cannot be considered newly discovered, because a petitioner would obviously be aware of the factual content of such testimony at, or prior to trial. *People v. Harris*, 206 Ill. 2d 293, 301 (2002). So too, the affidavit of an eyewitness is not considered newly discovered where it "does not contain any facts that defendant would not have known at or prior to his trial." *People v. Davis*, 382 Ill. App. 3d 701, 712 (2008). And finally, where a petitioner is himself aware of the underlying facts contained in the affidavit of an eyewitness, those facts are not transformed into newly-discovered evidence simply because the petitioner was not aware of that eyewitness's existence at or prior to trial. *People v. Jarrett*, 399 Ill. App. 3d 715, 724 (2010).

¶ 18 Here, petitioner contends that the affidavit of Mr. Head constitutes newly-discovered evidence because: (1) petitioner was unaware that Mr. Head had witnessed the shooting until 2012; and (2) out of fear for his own safety, Mr. Head had previously been unwilling to testify regarding what he had observed. However, the only relevant information contained in Mr. Head's affidavit concerned his observations of petitioner's own actions at the time of the shooting. This information was, therefore, comprised solely of facts already known to petitioner at or prior to trial, and it cannot be considered newly discovered merely because petitioner was unaware of Mr. Head's observations or the fact that Mr. Head might not have been willing to testify at that time. *Jones*, 399 Ill. App. 3d at 364; *Jarrett*, 399 Ill. App. 3d 724. Indeed, petitioner himself, who chose not to testify at trial, could have presented these very facts to the jury himself.

¶ 19 Because the evidence presented by petitioner was not newly discovered, it is clear that—as a matter of law—the proposed successive petition did not make the required colorable claim

of actual innocence. *Edwards*, 2012 IL 111711, ¶ 24. We therefore affirm the circuit court's denial of petitioner's request for leave to file a successive postconviction petition.

¶ 20 III. CONCLUSION

¶ 21 For the foregoing reasons, we affirm the judgment of the circuit court.

¶ 22 Affirmed.